

**MAGNUSON FISHERY CONSERVATION AND
MANAGEMENT ACT—BEAUFORT, NC**

4. M 53: 103-77

HARING
Magnuson Fishery Conservation and M... BEFORE THE
SUBCOMMITTEE ON FISHERIES MANAGEMENT
OF THE
COMMITTEE ON
MERCHANT MARINE AND FISHERIES
HOUSE OF REPRESENTATIVES
ONE HUNDRED THIRD CONGRESS
FIRST SESSION
ON
THE CRISIS IN OUR FISHERIES INDUSTRY AND HOW
BEST TO REGULATE AND MANAGE THIS IMPORTANT
RESOURCE

NOVEMBER 6, 1993—BEAUFORT, NC

Serial No. 103-77

Printed for the use of the Committee on Merchant Marine and Fisheries



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MAGNUSON FISHERY CONSERVATION AND MANAGEMENT ACT—BEAUFORT, NC

SATURDAY, NOVEMBER 6, 1993

HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON FISHERIES MANAGEMENT,
COMMITTEE ON MERCHANT MARINE AND FISHERIES,
Beaufort, NC.

The Subcommittee met, pursuant to call, at 9:40 a.m., in the Superior Courtroom, Carteret County Courthouse, Beaufort, North Carolina, Hon. Thomas J. Manton (Chairman of the Subcommittee) presiding.

Present: Representatives Manton and Lancaster.

Staff Present: Greg Lambert, Counsel; Julie Roberts, Counsel; and Lori Rosa, Clerk.

STATEMENT OF THE HON. THOMAS J. MANTON, A U.S. REPRESENTATIVE FROM NEW YORK, AND CHAIRMAN, SUBCOMMITTEE ON FISHERIES MANAGEMENT

Mr. MANTON. Good morning, ladies and gentlemen. I think we are almost on time. Before we begin, I want to note what a pleasure it is to return to this beautiful state. I had occasion to be here in the early 1950's while I was in the Marine Corps, and trained over at Cherry Point as a navigator. I understand things have changed a lot in 40 years. Unfortunately our time is limited, and we will not be able to visit for too long, but we will try to get back again. It is especially gratifying to be here with my good friend and colleague, Martin Lancaster.

The Subcommittee on Fisheries Management today continues its series of hearings on the Magnuson Fishery Conservation and Management Act. Over the last ten months we have heard from many scientists, bureaucrats, lawyers, and self-appointed experts on the Magnuson Act. But among the most valuable witnesses have been the commercial and recreational fishermen who have come to Washington and to our field hearings in New York, Alaska, and Oregon. These fishermen have learned from daily experience that there is a crisis in our fisheries. Even though they differ on how best to regulate and manage our fisheries, they know that they are fishing longer and catching less.

We are here today because my distinguished colleague, Martin Lancaster, felt it was extremely important that we hear from the fishermen of the Southeast, especially North Carolina. Your problems are extremely different from the problems of fishermen in other regions, and we are eager to learn from your experience.

However, before our witnesses begin, I recognize my colleague, Martin Lancaster.

**STATEMENT OF THE HON. MARTIN LANCASTER, A U.S.
REPRESENTATIVE FROM NORTH CAROLINA**

Mr. LANCASTER. Thank you, Mr. Chairman. And it is my great pleasure to welcome you to the beautiful town of Beaufort and to the beautiful coast of North Carolina.

Beaufort is the third oldest town in North Carolina, and because of its rich heritage as a seaport and center for commercial and sports fishing, I think it is very appropriate that the only hearing to be held in the South Atlantic is here in Beaufort, North Carolina.

My district starts south of here in Onslow County, and goes from here to Virginia along the coast. So I think it is important that we meet in a Congressional district that has such a huge share of both commercial and sports fishing for North Carolina.

It is a real honor to have you here, Mr. Chairman, who came to us all the way from New York to hold this hearing. We are very fortunate to have the Chairman of the Subcommittees on Fisheries Management come to conduct this hearing personally. This is the only field hearing that will be held on the Magnuson Act anywhere in the south. We very much appreciate your willingness to come to us, and as proof of our excitement that you are here, we do have witnesses who in some cases have driven several hours to be here.

If you will look at a map of our coastline you will see that witnesses from Dare County to the north, and from New Hanover County to the south have, in fact, endured journeys of several hours to be with us.

The Magnuson Act is the primary Federal fisheries act. In some respects it has been very successful since its enactment. Before it was enacted in 1976, foreigners came into our waters and caught huge amounts of our fish, to the detriment of our fishermen, our economy, and our natural resources. As a result of the law, the foreigners have now gone from our 200 mile zone, and we have Americanized our fisheries.

But new problems afflict us. Many stocks of fish seem to be in trouble. There are too many conflicts over the resources by the various users. Small commercial fishermen see their traditional independence and way of life threatened by rules from the Federal Government; recreational fishermen see their catches decline; nearly everyone has horror stories about inequities or inefficiencies in the management scheme set up by Magnuson. One thing ought to unite us, however. We all want to ensure that our fisheries are healthy, and that habitat is protected. If this can be accomplished, all of us stand to benefit.

We are here today to hear from North Carolinians, how they are affected by Federal fisheries policies, and how they suggest the Magnuson Act should be changed. I already know of one correction needed in the Magnuson Act. Currently North Carolina is a full voting member of the South Atlantic Fisheries Management Council, and that is as it should be. But our state should also have full

voting representation on the Mid-Atlantic Council. Right now it does not.

The Mid-Atlantic is the council that writes management plans for species such as summer flounder, weakfish, and bluefish. These species are vitally important to North Carolina and her fishermen. In fact, we frequently catch more of these species than do fishermen in the states actually a part of the Mid-Atlantic Council. It would simply be the right thing for our state to have voting membership in that council, and I have drafted an amendment to the act to do just that.

I now am very pleased to ask that we proceed with the hearing, so that we might hear from the witnesses who have prepared themselves in such an effective way to tell their side of the story, and to make their suggestions on Magnuson. Thank you again for coming, Mr. Chairman.

Mr. MANTON. You are quite welcome. And we will start with Dr. William Hogarth, Director, Division of Marine Fisheries, North Carolina Department of Environment, Health, and Natural Resources. Doctor, good morning.

STATEMENT OF DR. WILLIAM HOGARTH, DIRECTOR, DIVISION OF MARINE FISHERIES, NORTH CAROLINA DEPARTMENT OF ENVIRONMENT, HEALTH, AND NATURAL RESOURCES

Mr. HOGARTH. Thank you, Mr. Chairman. Welcome to North Carolina. Congressman Lancaster, we appreciate your efforts in having this meeting here.

I am Bill Hogarth, Director of the Division of Marine Fisheries for North Carolina. And, first of all, I want to point out we do support the concept of the Magnuson Act, and firmly believe that only through this type of state and Federal management system will we be able to enhance and protect our valuable marine resources. You have my prepared testimony today, and I will have—I feel like the Magnuson Act must be amended to better create this state/Federal partnership which is necessary to restore, improve, and provide long-term management of this state and nation's great fisheries resource for all citizens.

Clearly there is no doubt that North Carolina, with its nationally unique and immense riverine, estuarine, and coastal environment is now and will remain a major player in the management of this nation's fisheries. Changes—excuse me, it is tough talking first thing in the morning.

Mr. MANTON. You can pour yourself some water, Doctor, if you would like.

Mr. HOGARTH. OK. It—clearly there are some changes which are necessary in the Magnuson Act to carry us into the next century of state/Federal relationships to finally achieve successful management of this state and nation's fisheries. I am convinced that we state directors must have a single national fishery perspective best achieved by combining the numerous agency programs so that the Federal Government speaks with one voice. We will utterly fail to meet the challenges of the next century by segregating our fisheries and our management into arbitrary riverine, estuarine, coastal, and marine components, each with its own different set of politics,

funding mechanisms, and ultimately different regulatory measures. We are confusing ourselves, and doing little to benefit the fish or the fishermen.

We must provide for decisionmaking at the National Marine Fisheries Regional Office level, where the states and resource user groups will be more able to interact on major management issues. Naturally, we must have enhanced data collection, management, and analysis. We must build upon our existing programs at every level, consolidating and simplifying wherever possible, and developing national uniform reporting processes at both fishermen and dealer levels. To succeed, we must have data programs that the resource users support and are willing to cooperate with if we ever hope to ensure compliance and improve the quality of the data we collect.

Now, to talk about some of the specific issues that we are concerned with, Congressman Lancaster has already hit the one I think that is most important to the fishermen of North Carolina. It is extremely important, and I do not know if I can stress how important it is, that North Carolina become a member of the Mid-Atlantic Council. We are presently a member of the South Atlantic Council, and this council manages some species like king mackerel, snapper/grouper that are extremely important to our fishermen from the south. But the Mid-Atlantic Council is also dealing with species such as weakfish, which we catch 70 percent by numbers. They are dealing with bluefish, and everyone has heard of the Hatteras blues and the importance of those fish. Dealing with summer flounder, we have 30 percent of the program. So the Mid-Atlantic Council has a great impact on our fishermen, and we do not have any input into this process. And in any participating democracy your fishermen have to have an input if you expect them to abide by the rules that come forward. So overwhelmingly, I think, all of us in North Carolina support, and we have the support of both councils—the South Atlantic and the Mid-Atlantic—that we become members of the Mid-Atlantic Council. That, to me, is by far the most important issue that could affect North Carolina.

Number two, to further the one Federal voice, 302(b) must be also amended at a minimum to include the Fish and Wildlife Service as a voting member of the councils. Fish and Wildlife Service has—is dealing with striped bass, and has several other species that it is working with, but they have no vote on the council, and we feel like it is important that they be a voting member and become more a part of the management scheme.

Section 304 needs amending to establish a procedure and time work frame for regulatory amendments. Fishery management is so dynamic now, the plans can no longer be set in place and left. Plans now need to contain framework measurements which can provide fairly rapid change so that adjustments can be made, and mandatory shorter schedules—shorter than the full planning amendment time frame needs to be established for the regulatory amendment process to accomplish its intended purpose.

Section 301(b) requires the development of guidelines to assist councils who plan and develop. The intent of the 602 guidelines was to assure that overfishing was defined, and a program and timeframe was developed to remove a fishery from an overfishing

status. The attempt is excellent; however, in practice it has, on occasion, impeded the conservation process. A case in point is Amendment 1 to the Summer Flounder Plan. Amendment 1 had all the necessary conservation measures to remove the fisheries from overfished status, except the quota management system. These measures included mesh size, fish size limits, and bag limits. Even though it was clear that the quota would be implemented, the plan was rejected, and it took 18 months to get it into place, while the fishery further declined.

Section 304(d) limits fees to administrative costs incurred in issuing the permit, consideration should be given to providing the council the authority to establish user fees. However, if these fees are established, they should go to a dedicated fund for management of the resource.

Section 304(f)(3), we feel like the highly migratory species should be returned to the councils, so that we can make sure that the state and fishermen input is considered.

And Section 306 of the act needs to be amended to clarify the authority of the states to regulate the fish harvested from the EEZ. I believe the act today allows the application of state law, so long as it does not conflict with the Federal FMP.

Mr. Chairman, this is a portion of my prepared testimony, and the whole testimony is available. Again, we welcome you to North Carolina. We hope that you will take these written comments and the comments of the fishermen today into consideration. The Magnuson Act is a good act. We must have the state/Federal partnership to manage the fisheries. That is the only way we are going to manage it in a cooperative effort—in a manner that it should be done. And I will be glad to answer the questions that you have.

[The statement of Dr. Hogarth may be found at end of hearing.]

Mr. MANTON. Thank you, Doctor. A couple of questions. You recommend returning the management of highly migratory species to the councils because of the lack of opportunity for fishermen to participate in the current process. Assuming we provide greater opportunity for public participation, are there other reasons to return this authority to the councils?

Mr. HOGARTH. I think that is probably the primary purpose. I think the other thing is the input. The Secretary has to act through the **Federal Register**. And the **Federal Register**, from the fishermen's standpoint, is sometimes very difficult for them to understand and to interpret what is happening. The council process gives them—I think gets it down to the state—the Federal level, and even to the regional level of the National Marine Fisheries where they could go and get their questions answered then. They will feel like they are more a part of it.

And, such as sharks. Sharks are one of the highly migratory species that is now in the secretarial plan that we are extremely concerned about, because we have had a very difficult time in getting input and getting—having someone from our fishermen to go and express their concerns with it. And the sharks are also in state waters and in Federal waters, and we just have not been able to get a plan that was fair or kept the market open. So I think the secretarial plan tends to look at things on a higher level, and it does not look at the market and what is happening to the individ-

ual fisherman, which I think you can do more with the council plans.

Mr. MANTON. We have heard frequent complaints from fishermen about uncertainty in the current process. An example would be when they are notified in the morning that a certain fishery will close at midnight. You emphasize the need to be able to rapidly adjust fishery management plans. How do you accomplish this without increasing the uncertainty that fishermen currently experience.

Mr. HOGARTH. OK, I think with the—you know, when you do a full plan, then you get that plan in place, I think the tendency is for that plan to go on the shelf and not be, you know, looked at again. We feel like we have got to continue to plan, and not put it on the shelf.

What we are talking about is that these should be updated on a regular basis, and have a timeframe in the plan that you are going to update it, and a system that you go through. For example, is—a species that you are dealing with, is it improving, or does it need further regulations to assure that the fishermen gets the benefit of when it improves, and if it does not improve, that we look at it to take further restrictions. I do not think it means that they are going to have any less time, but what we are saying is: Let us make sure that these plans have a follow-up in them so that we take them off the shelf on a regular basis, look at them, adjust them, and have a shorter timeframe to do that, rather than the full time it takes to do a plan. The plan is in place; we want to just make minor adjustments based on what is happening.

Mr. MANTON. Mr. Lancaster?

Mr. LANCASTER. Just one question. Mr. Hogarth, if you would, explain for this hearing record the unique nature of our geography—the currents, the water temperature, just simply the coastline—that makes North Carolina sort of the dividing point between North Atlantic and South Atlantic, and how the fisheries sort of break mid-North Carolina, and why it is appropriate for us to have representation on both councils.

Mr. HOGARTH. That is—thank you, that question is very good. Yes, we do deal with a mixture of the northern and southern species. With the—as the Gulf Stream comes up from the south and hits the end on Cape Hatteras it veers out very, very dramatically. In fact, in Hatteras it comes in closer to the United States than most any other place along the coast. So you have these eddies and currents that are set up, as it veers off.

But then you have these northern currents that are coming down, that follow the coast down until they hit this current. So it brings these northern species in the cold waters down, and the southern species with the—in the Gulf Stream are brought up. And the point of divergence, with the currents and all, is at approximately Cape Hatteras. And there is an extremely dynamic fishery there. It is dynamic currents and everything. So it is just really a dividing point. It is very evident, if you go out and look at it; very evident if you take samples from there, it is a complete dividing area. And we manage a lot of that by species, by looking at Hatteras South and Hatteras North, even within the state. So we will close an area south of Hatteras because we have got small fish or

different fish, where we will leave the northern part open. It is just a complete difference. There is a difference in flows, a difference in temperatures, a difference in depth characteristics and flows. So it is a unique situation.

Mr. LANCASTER. And in your work as a state regulator you actually use Hatteras as a breakpoint?

Mr. HOGARTH. Yes.

Mr. LANCASTER. Often having completely different regulations north and south of Hatteras, based on the uniqueness of the geography, current, water temperatures, and fisheries?

Mr. HOGARTH. Yes, sir, most all the time. You could not manage it the same. In fact, some of these species do not even go south. Summer flounder go there, but we do not catch anything—it is just nil what we catch south of Hatteras. And you just have to manage it differently.

Mr. LANCASTER. OK, thank you, Dr. Hogarth.

Mr. MANTON. I think there is some precedent for a state being in more than one council. New York is trying to get into the New England Council, as well, for some of the very same reasons cited by Dr. Hogarth. And, of course, Florida is a member of the Gulf and the Southeast Councils.

Mr. LANCASTER. Is there not one West Coast state that is in two councils, also?

Mr. MANTON. I believe Washington and Oregon are both on the Pacific Council and the North Pacific Council.

Mr. HOGARTH. Yeah, Florida is in the Gulf and South Atlantic. We deal with them in the South Atlantic, and then they turn around and deal sometimes with the same species on the Gulf side. So I think you—I think the Magnuson Act is the way to go with management, but I think you will have to get it to the point where the fishermen have an input into the fish that are being regulated. And from a commercial standpoint, the Mid-Atlantic has had a tremendous impact on our fishermen.

Mr. MANTON. Thank you very much, Dr. Hogarth.

Mr. HOGARTH. Thank you. Again, we are glad to have you here.

Mr. MANTON. Glad to be here.

Our second panel will consist of Mr. Jerry Schill, Executive Director, North Carolina Fisheries Association; Mr. Richen Brame, Executive Director, Atlantic Coast Conservation Association of North Carolina; Mr. Melvin M. Shepard, President, Southeastern North Carolina Waterman's Association.

Gentlemen, if you will notice, there are a series of lights there. And I know you have all prepared your presentations very well, but we are going to try to limit your oral testimony to about five minutes, during which time the green light will be on. And then, when you see the yellow light, that means it is about time for you to summarize. And then, when the red light comes on, time is up. We are going to try not to cut you off in mid-sentence or anything like that, but just so we move along. And we will try to confine our questions to a limited period of time, as well, so that we can get through this hearing expeditiously.

We will start off, I guess, in the order that you were called, with Mr. Jerry Schill.

STATEMENT OF JERRY SCHILL, EXECUTIVE DIRECTOR, NORTH CAROLINA FISHERIES ASSOCIATION

Mr. SCHILL. Thank you, Mr. Chairman.

I would also like to extend a warm welcome to you to North Carolina, and certainly thank you, Representative Lancaster, for making this field hearing available to us.

My name is Jerry Schill. I am Executive Director of the North Carolina Fisheries Association, which is a 41-year-old trade group that represents the commercial fishermen, seafood dealers, and processors in our state. In addition to my position as executive director for over six years, I have served on the South Atlantic Fishery Management Council for four years. And be assured that I certainly will abide by the rules of your time efficiency device, or TED. We do not take TED regulations lightly in this state, Mr. Chairman.

North Carolina needs voting representation. It was so aptly made by Dr. Hogarth, and mentioned earlier by Representative Lancaster. We need representation, voting representation on the Mid-Atlantic Fishery Management Council. There has been overwhelming support of this move, and because of the number of fishery management plans, or FMPs, either in place now or in the process of being made by the Mid-Atlantic Council that directly affect North Carolina fishermen, it is vital that we have this voting representation.

As far as the language in the Magnuson Act, we feel that it is fairly adequate for fair representation on the fishery management councils. However, the flagrant violations by the Secretary of Commerce in making appointments to the council brings an obvious inequity in our view. In the South Atlantic Council on which I serve there are currently only three of 13 voting members of the South Atlantic Council that are of commercial interest, and prior to August there was only two voting members. And South Carolina has never had a commercial representative that sits on the South Atlantic Council since the Magnuson Act's inception in 1976.

On the Mid-Atlantic Council, 19 voting members, and only three of those folks are commercial interests. And we feel that this issue must be addressed either by stronger language in the act, or by your committee's intervention with the bureaucrats in charge of the implementation.

I would like to add a few things regarding that, citing the Magnuson Act. Not so much the council appointments, but language that tried to rectify that situation in conjunction with the 1990 amendments. It says, "Within nine months after the date of enactment of the Fishery Conservation Amendments from 1990, the Secretary," meaning the Secretary of Commerce, "shall, by regulation, prescribe criteria for determining whether an individual satisfies the requirements of the subparagraph. Additionally, on January 31, 1991, and each year thereafter, the Secretary shall submit to the Committee on Commerce, Science, and Transportation of the Senate, and the Committee on Merchant Marine and Fisheries of the House of Representatives a report on the actions taken by the Secretary to ensure that such fair and balanced apportionment is achieved."

That particular paragraph, Mr. Chairman, was actually—that report was actually turned in one and a half years after the required date by the Secretary. It was only in the fall of 1992, rather than in January of 1991, when that first report was made. That is Federal law. I certainly—when we get in front of a bunch of commercial fishermen we certainly do not condone the violating of any law, whether it be a turtle excluder device, or minimum sizes, or quotas, or whatever. Certainly we tell the commercial fishermen in this state that you must abide by the laws, but work within the system to change that law, whether it be through the council process, whether it be through a field hearing such as this, or whatever.

But here is a situation, whether it be the appointments to the councils, or these reports that are mandated by the Congress of the United States that the Secretary shall make, and they were not in a timely fashion.

Certain reports were made late, but it is akin to the Coast Guard boarding one of our vessels and finding that a TED maybe has been sewn shut, and the fishermen promising that he will not do it anymore, so do not give me a ticket. Well, that is not going to happen. The Coast Guard will, indeed, issue that citation, and justifiably so. But, by the same token, here we have a Federal agency that is flagrantly violating the very act that you folks passed, and we feel that they have to be held a little more accountable.

Again, we thank you for coming, and we appreciate this opportunity to speak. And I will be glad to answer any questions. Thank you.

Mr. MANTON. Thank you. I think we will get to questions after the entire panel. Mr. Brame?

STATEMENT OF RICHEN BRAME, EXECUTIVE DIRECTOR, ATLANTIC COAST CONSERVATION ASSOCIATION OF NORTH CAROLINA

Mr. BRAME. Thank you, Mr. Chairman. Again, I welcome you to North Carolina, and its beautiful waters and woods and wildlife.

I am Richen M. Brame, Executive Director of the Atlantic Coast Conservation Association of North Carolina, and I am testifying on behalf of our nearly 3000 member anglers.

North Carolina anglers spend almost 300 million annually in pursuit of everything from mullet to marlin. That is almost 5000 job years directly related to the recreational industry. There are 100,000 boats registered in this state 18 feet or greater, and there are nearly 130, last time I counted, primary boat manufacturers in this state. The economic impact to our coastal counties—this economic impact is entirely dependent on a healthy and abundant fishery resource. I have provided written testimony that I would like to summarize for you.

The next reauthorization of the Magnuson Act should focus on conservation of our marine resources, thereby making it a much stronger piece of legislation. It is especially critical here in North Carolina, where the only effective regulation to date has come from on species that are managed by either the National Marine Fishery Service, the council, the Atlantic States Marine Fisheries Commis-

sion. Fourteen of 22 species monitored by the North Carolina Division of Marine Fisheries are classed distressed or overfished; four are unknown; and four are healthy. Of those last four healthy ones, Spanish and king mackerel are recovering because the South Atlantic Council implemented a stringent management plan. Two other recovering species, summer flounder and striped bass, are doing better only because of the threat of Federal intervention, in our opinion. Without a Federal presence, the North Carolina Division of Marine Fisheries would not have acted nearly as strongly on these species.

In short, we view a strong Federal presence as critical to the future of fishery management, both for the reason just mentioned, and because it just makes sense to manage these fish across state boundaries. They must stop putting the short-term economic or social needs, both commercial and recreational, ahead of the long-term conservation needs of the fishery. We need to change from managing for optimum yield, which is often unattainable and thus no real restriction on harvest, to maximum sustainable harvest, and develop a policy to deal with the deadly by-catch of grossly inefficient fishing devices.

For example, North Carolina fishermen alone kill almost 250 million small fish annually, and either shovel them overboard dead, or sell them for pennies per pound as scrap. The majority of these fish are recreationally important species like croaker, weakfish, and spot. This type of waste cannot be tolerated.

While some of the changes made in the last reauthorization made a difference, the most controversial ones made little or no change. Those calling for more conservation are still calling for it; those calling for management to be more responsive to economic interests are still calling for it; and those claiming that it would all work splendidly if only the administration would implement it properly are still calling for a change in the leadership of NMFS.

Why are these people complaining? Because they have very little confidence in the institutions that regulate their activity. They believe the councils, NMFS, and ICAD are political bodies with an interest other than their own. We have, in this reauthorization, the chance to restore confidence in this system. Let us make it unequivocally clear that the overall objective of the act is conservation. Let us define the roles of the institutions clearly, so that everyone understands the policy and regulatory limits of that institution. Let us remove the economic incentive from serving on fishery management councils, and keep those who receive compensation from any interest directly regulated by the council from serving.

Lastly, a recent court decision has put a number of fishery plans in jeopardy. A Florida court official has ruled that the state cannot stop the landing of a species that is caught in the exclusive economic zone, even if the state has a management plan. In North Carolina this may have dire consequences for weakfish, a species in particularly bad shape.

We agree with Pacific States Marine Fisheries Commission, Gulf, and Atlantic Commissions, and urge the Congress to amend the Magnuson Act in Section 306 to specifically establish and clarify the authority of the states to manage species harvested in the EEZ

that occur in both state territorial waters and the EEZ in the absence of a council management plan.

Some of these ideas may seem a little radical, but not as radical as the call to abolish the councils, to abide by decisions of international bodies over which we have little or no control, or allow a wholesale change of a basic system we have operated under for a decade and a half. The right approach is the mandated conservation of these valuable fishery resources first and foremost, and strengthen the institutions that manage them, not weaken them. Thank you.

Mr. MANTON. Thank you, Mr. Brame. Mr. Shepard?

[The statement of Mr. Brame may be found at end of hearing.]

STATEMENT OF MELVIN SHEPARD, PRESIDENT, SOUTHEASTERN NORTH CAROLINA WATERMAN'S ASSOCIATION

Mr. SHEPARD. Mr. Chairman and Congressman Lancaster, thank you for holding this meeting in our state. I have been with you in D.C, Mr. Chairman, and watched your interest, and appreciate it. I am going to attempt to summarize the written testimony I sent in earlier.

We believe that the original intent of Congress, as expressed in the act, was necessary, perhaps even overdue, and clearly was for the common good. The act explicitly intended intelligent, informed fairness to U.S. citizens. Administration of the act has been short-sighted, derelict in making the act come to life, and has played havoc with the lives of fishermen and the resource. Nowhere is, "For every action there is an equal and opposite reaction," more true than in managing the fisheries.

The act fails to ensure an appeal process. During the last five years we have had to appeal to Congress for assistance. Thank you, Congressman Lancaster. Even then, the Congressional offices have experienced great difficulty.

Section 306, state jurisdiction—seem to hear a lot about that today, Mr. Chairman—needs to be expanded to make a state/Federal partnership in managing fisheries. Virtually all juvenile fish depend on state waters. Virtually all fish caught are landed in state ports. There can never be a successful management plan without state enforcement. There can never be successful enforcement without state involvement, regardless of the money that Congress pours into the Magnuson Act.

Data collection. Accurate fish catch data collection is essential. Yet few states have accurate systems, if they have a system at all. Congress must mandate a uniform data collection system of all states, with appropriate incentives. That has a dollar sign, Mr. Chairman. And state and Federal managers jointly preparing and agreeing on the plan. You are now extending funds for Federal data collection separate from the states that only adds to the confusion. Accurate landings data collection needs to be at the state level, and totally shared with the Federal managers. Presently everybody is doing their own thing. The result is a great deal of dispute over quotas, and the truth of historic data.

Fisheries habitat concerns. Mr. Chairman, this section devotes only three paragraphs to the very lives of juvenile fish. The condi-

tion of the nation's estuarine systems is a national disgrace. The Clean Water Act still resides in Washington, D.C. It has not yet arrived where juvenile fish live and grow.

Fisheries research. Where is the strategic plan for fisheries research for the next five years, as required by the act? Much like Jerry said, it is written out very clearly. This area needs funds that are dedicated funds. All the fishing industry would like to be made aware of research plans, and would like to be involved. Section C provides a role for affected fishermen in such research, including field testing, and it is very clear. No management plan should be allowed unless research with fishermen involved supports the plan. Fishermen want the resource to last forever. We need to understand that, Congressmen. We want it to be there forever. There needs—they need to understand the problem, and they need to understand their role in the problem.

We, as U.S. citizens, are being called on for more to help balance the budget. Fund research by taxing fishery imports more. Fishery imports severely impact U.S. seafood markets, and often distribute seafood products that are of a size or species that are not allowed U.S. seafood harvesters.

Discretionary provisions. Administration of this section of the act needs to include a reminder of four under the national standards. These provisions have been used like an ax, with virtually no regard for our nation's chief resource, people. This section, as used, has created price-fixing, discrimination, and other illegal activities.

In closing, if the administration of the act will not come to the door or answer the phone, how can Congress construct a window through which response is required? How can Congress create an oversight that has the ability to review and correct violation of the intent of the act, and/or civil and criminal laws broken under the umbrella of the act.

Thank you very much for the opportunity to speak to you. Thank you again for being in North Carolina.

Mr. MANTON. Thank you very much, Mr. Shepard.

[The statement of Mr. Shepard may be found at end of hearing.]

Mr. MANTON. That concludes the testimony of our second panel, and we will now go to a few questions.

Mr. Schill, you are a man of few words, but I think you made a good observation that oftentimes those who make and administer the laws do not obey the laws, and that is something we should really turn our attention to. Mr. Lancaster has strongly lobbied me to include your state in the Mid-Atlantic Council, and I think this is supported by the Mid-Atlantic Council and many other witnesses who will testify today. I suspect that with Mr. Lancaster leading the charge, that your request will probably come to fruition.

You criticized the Secretary of Commerce for the low number of commercial fishermen on the councils; others complain the governors do not recommend enough commercial fishermen. How much are the governors to blame in this situation?

Mr. SCHILL. Thank you, Mr. Chairman. That is a good question, and I think the governors can be blamed an awful lot. In North Carolina, although it is not written in statute, the governor of this state has elected, at least in the past, to make one seat available to commercial interests and one seat available to recreational inter-

ests, which I think should be duplicated with the other states, especially in the South Atlantic Region and the Mid-Atlantic Region.

But, you know, when you talk about the Magnuson Act, the buck stops with the Secretary of Commerce. Certainly, while the governors can be faulted for their nominations, it says right here, "If the Secretary determines that any individual is not qualified, the Secretary shall notify the appropriate governor of that determination. The governor shall then submit a revised list, or submit the original list with an additional explanation of the qualifications," et cetera. I think that is very specific. And if it needs to be made more specific for these bureaucrats making these decisions, then I think it is incumbent upon Congress to do so.

The fact is, and I think the former chairman of the Merchant Marine and Fisheries Committee, Walter B. Jones, from this very district that we are sitting in, made the observation, and I think it was alluded to earlier by Dr. Hogarth, that no fisheries regulation will work unless the fishermen, although begrudgingly, accept it in some way. And especially when you are dealing with councils that have a totally dominating effect against the commercial interest, that perception is going to be there that it is not fair, and you will not have that grudgingly accepted fishery regulation in place.

Mr. MANTON. Thank you.

Mr. Shepard, in your comments on the Ocean Studies Board, you made certain strong recommendations about removing certain political parties to obtain justice. I commend you for your insight, but I would like to ask how you feel the new administration is doing so far. Is it on the right track?

Mr. SHEPARD. Thank you, Mr. Chairman. That was a highly emotional meeting in Solomon, Maryland, I want to assure you. And those statements were made with a great deal of emotion, and I still feel the same way. I think we had some great things happen.

We are meeting with the new director in New Bern, Rollie Schmitten this coming Wednesday. That, in itself, is monumental. I think we are headed in the right direction.

I would like to place this caution before Congress: That is, that administrations come and go, and no one knows that more than you. And the Magnuson needs to be the foundation that controls these administrations movements. Thanks again.

Mr. MANTON. I think you are going to find, with the gentleman who you just mentioned that you met with, an interest in getting out into the field right across the country. I had the pleasure of meeting with him this past week. Aside from the fact that he is an ex-Marine, he looks like a good man on the job who really wants to change things for the better, so I was impressed by him.

Mr. SHEPARD. Mr. Chairman, as an ex-sailor, I will have to side with Congressman Lancaster, but—

Mr. MANTON. It is all part of the naval service.

Mr. SHEPARD. Yeah, yeah, yeah. The entire point being that here is someone that is interested in getting out and meeting the people. Let me assure you that the fishermen in North Carolina, in a tremendous number of cases, do not need to receive pay to become part of the research process, and that has been going on for awhile. We want to be involved, and if Rollie Schmitten will get us in-

volved, there will be a lot of happy people, because we will have a lot of good information.

Mr. MANTON. Mr. Brame, you want to add anything to—

Mr. BRAME. Well, I had not entered my comments, but we also support the seat on the Mid-Atlantic Council. We feel it is critical to have the representation on that council, and I have to reiterate: We feel that a strong, unified Federal voice in fishery management is critical. It just does not make sense to manage fisheries that go across state and territorial lines state by state.

Mr. MANTON. Well, it looks like my time has almost expired. Mr. Lancaster?

Mr. LANCASTER. Thank you. And, Mr. Brame, I am glad that you made the last comment, because I wanted to get your position on the Mid-Atlantic representation. But it appears to me that you and Mr. Schill maybe have a fundamental disagreement on representation. As I understood your testimony, you are of the opinion that no one on the council should have any financial interest in the fisheries which they manage. And I wonder if you mean by that also that there would be no sports fishing interest on the council? And if you have neither sports fishermen nor commercial fishermen on the council, how do you bring to the discussion of issues the expertise that is necessary to make good decisions? What would be the representation on the councils if you excluded both people who have an interest in commercial and those who have an interest in sports fishing from the council?

Mr. BRAME. I was not speaking about people who fish, who have their own business. I was speaking about people who were paid to represent an interest, who sit on the council. For instance, I do not think I should be allowed to sit on the council. But a recreational fisherman should, and a commercial fishermen should, too.

Mr. LANCASTER. Well, I misunderstood your comment. Do you feel that it is appropriate, as Mr. Schill has indicated, that the act actually mandate some sort of balance on the council between various interests? And, if so, how would you divide those interests?

Mr. BRAME. Well, the interests really are not, from our point of view, recreational and commercial, they are really conservation interests. That is why I do not think that the government should get involved in specifying each seat. We have tried that experiment with the North Carolina Marine Fisheries Committee, and I, for one, do not think it works too well. It is unwieldy, and it is difficult to get good people because you have specific slots to fill. I think you need to get people who will look at the overall resource, first, and get those good folks there.

Mr. LANCASTER. Mr. Schill, I wonder if you could comment further on your belief that greater balance should be achieved in some fashion, and how you recommend that being achieved. And if it is going to be by statute, would it be 50/50, commercial/recreational, or would you also have public citizen kinds of representations included that have neither an interest in commercial or sports, or how would you achieve that balance?

Mr. SCHILL. Thank you, Martin. I think that is a good question. But it is—I do not believe the answer to fixing a regulation that does not work is to make more regulations, because then you have two that do not work.

I think the attitude within the agency has to be fixed. And I think that it is up to Congress to do that—we cannot do it. I mean, they are not beholding to us, certainly, but they certainly are to Congress. I think that it is incumbent upon Congress to—I really—I cannot see actually why there is need for additional wording. I think the wording is very straight-forward. You do not have to tie them down as far as numbers are concerned. I do not think that is fair.

But I think there is not even an attempt, in my view, that the fairness and equitability is being fulfilled. I think that if Congress keeps their feet to the fire, that the fairness can be addressed.

But one thing that I would like to point out regarding this fairness thing, and with what Dick was referring to earlier was obvious about folks like myself sitting on the council. When I raised my right hand, when I was first appointed to the council four years ago, I did not say that I was taking the opinions of the North Carolina Fisheries Association, and that is the way I was going to vote. Certainly I take that expertise that I developed in representing these fine people in North Carolina to the table, and I do; but I have voted several times on certain issues that my membership might not totally agree with, and that is the way it is. They are not the ones sitting around the table listening to the debate.

That is the purpose of the council, to bring all these arguments to the table, and it is incumbent upon me to take into consideration what my membership feels, but certainly that is not the do-all-end-all to the way I vote on that council, and certainly will not be in the future. So I think that those really flagrant statements made to indicate that those of us that represent organizations do so under the guise of representing our membership or we might not get paid are totally unfounded, because I do not do that.

Mr. LANCASTER. Now, one last question. The language in the act as you quoted awhile ago spoke to the Secretary having the opportunity to reject a proposal from a governor, or nomination from a governor for lack of qualification. It would appear to me that qualification should not be—if you seek to achieve balance, qualification is not the way to go, because you could have all commercial interests or all sports interest that would be qualified, but that in no way would see to the balance issue. Is really the language adequate to achieve balance?

Now, I know that there was report language that required the Secretary to make reports with regard to make-up of the council, but that is different from the statutory language that gives him the authority to reject a nomination, and that is based on qualification and not balance. But do we not need to add some language there that speaks not only to qualification but to balance if we want to achieve your purpose?

Mr. SCHILL. Exactly. What you are saying is that the standard—the Magnuson Act refers to that Section A, as far as qualifications, and we believe that if we are going to hold their feet to the fire, the Secretary should also reject them according to the balance and the fairness. Yes, that should be added.

Mr. LANCASTER. Thank you. Sorry, my time is out, Melvin.

Mr. SHEPARD. OK.

Mr. MANTON. Gentlemen, thank you very much. We will go to our third panel consisting of Dr. Barbara Garrity-Blake, Vice President, Carteret County Auxiliary, North Carolina Fisheries Association; Mr. Oscar Greene, Jr., President, Atlantic Flying Fish, Incorporated; and Mr. Damon Tatem, Owner, Tatem's Tackle Box. Dr. Blake?

STATEMENT OF DR. BARBARA GARRITY-BLAKE, VICE PRESIDENT, NORTH CAROLINA FISHERIES ASSOCIATION, CARTERET COUNTY AUXILIARY

Ms. GARRITY-BLAKE. I thank you for the opportunity to testify on behalf of the North Carolina Fisheries Association, Carteret County Auxiliary, and as an anthropologist who works extensively among the commercial fishing committees.

The purpose of the Magnuson Act is twofold: to conserve U.S. fishery stocks, and to promote domestic, promotional, and recreational fishing, taking into account the social and economic needs of the states. It seems that the balance between biological concerns and socioeconomic concerns with the U.S. fisheries has not been adequately struck. More emphasis seems to be put on the conservation of fish stocks, while socioeconomic considerations and sound socioeconomic data are sorely lacking. Even when good socioeconomic data is compiled, it seems that these considerations do not hold a whole lot of weight in policy-making decisions.

I feel the Magnuson Act goal of promoting the U.S. fishing industry has been of low priority. The consequences of this neglect are far-ranging. Commercial fishing committees in this region and in virtually every other U.S. region are nearing a state of social and economic crisis.

The crises commercial fishermen face are often for reasons other than stock depletions. It is unfortunate that there is not a waterman testifying this morning, as fishermen most directly experience the effect of rules under the Magnuson Act. If there was a fisherman testifying this morning, he would likely tell you that he faces an overabundance of regulations at the national, regional, and state levels, many regulations which have been contradictory, poorly researched, and costly.

The fisherman would likely tell you that he faces a market with increasing importation of seafood and fishery products which threatens to undermine his ability to make a living, and he would likely tell you that he faces the displacement of his family and his committee by politically powerful recreational interests. I think if policymakers took the socioeconomic concerns of the Magnuson Act as seriously as they do the conservation portion, the present-day crisis would likely not exist.

The primary political force behind the passing of the Magnuson Act in 1976 was to eliminate foreign fishing vessels that had been harvesting in U.S. waters. Now, almost 20 years later, the context in which fisheries management decisions occur is extremely complex, as in the context in which commercial fishermen work. It is increasingly perceived by the public that there still exists an enemy in U.S. waters, but ironically that enemy is perceived as the American commercial fisherman, himself.

Fishermen have been rather demonized by well-funded campaigns of interest groups that, under the guise of conservation, seem to seek exclusive access to fisheries and coastal resources. And I bring this up because I think this is of national concern. And, for example, the "Ban the Net" crusade, which disseminates misinformation in a very emotional appeal to the public, has managed to throw thousands of fishermen out of work in major states such as Texas and California. This movement is presently active in North Carolina.

Hence, my second point regarding the Magnuson Act. Federal as well as state fisheries policies are increasingly driven by ideology that is public or interest group opinion, rather than scientific data. And this is in violation of that portion of the Magnuson Act which states that management programs must be based on the best scientific information available, must promote efficiency, and must be responsive to the needs of interested and affected states and citizens. Area-specific data, sometimes in biology, and usually in the social sciences, fall victim to Federal policy, our own example being the recent National Marine Fisheries requirement of turtle excluder devices in all trawls, including inside—that is, sound and estuarine waters. This policy flew in the face of area-specific data; it flew in the face of data in the "Decline of the Sea Turtles" report on which the TED policy is largely based; and it flew in the face of state fisheries recommendations; and it certainly did not account for any kind of socioeconomic impact.

Getting to my recommendations, the main weakness in the Magnuson Act seems to be not in its writing, but in its implementation. More aggressive measures are needed to assure that the present imbalance between fishery conservation and fisheries management—regarding socioeconomic concerns, specifically—is redressed.

In considering the social climate of the late 20th Century, very different from the days when foreign vessels were easily—were the easy target—I missed what line I was on. OK, I read you my recommendations.

I further recommend that the Magnuson Act exclusively address the major factors undermining the industry today that are of national concern, including the importation of seafood and the marginalization and displacement of fishermen. Provision for the protection of commercial fishing interests from ideological campaigns and resulting ideologically driven policy is in order. This would serve the integrity of the fishermen, the consumer, and sound scientific study.

Regarding fishery stock depletions, the act addresses one major factor to the depletions, and that is overfishing. I feel like this is a bias. Other factors contribute to the problem as well. The overdevelopment of coastal areas, for instance; freshwater run-off; declining water quality; and so on.

I recommend that the Magnuson Act exclusively call for the coordination of this act with other legislation that works to promote clean water, protect wetlands, and so on. Only by coordinating such efforts will fishery resources truly be protected. Thank you.

Mr. MANTON. Thank you. Right on time. Mr. Greene?

[The statement of Ms. Garrity-Blake may be found at end of hearing.]

**STATEMENT OF OSCAR GREENE, JR., PRESIDENT, ATLANTIC
FLYING FISH, INCORPORATED**

Mr. GREENE. Yes. I do not want to frighten you with this. But, Martin, you gave me—

Mr. MANTON. Mr. Greene, you had me a little worried.

Mr. GREENE. You—at least Felix gave me 30 days; you give me five minutes.

Now, this is the data for the shark plan that I have accumulated since 1980. This is the North Carolina Shark Plan. It is my understanding that it took \$450,000 to develop one of these. If they wanted to get rid of sharks, they could have used that money to buy the boats from these men that have worked so hard.

Less than ten years ago the National Marine Fisheries Service stated that shark was an underdeveloped species. The National Marine Fisheries Service went so far as to subsidize boats to get into the fishery. Less than five years later they come out and say fisheries—shark fisheries have been overfished for ten years.

Now, I am targeting sharks because I know more about that. I was in on that from the beginning. However, the same applies to the snapper/grouper and other plans; they are not based on the economic value or the conservation that is necessary to perform their responsibilities. I just wanted to use that as an example of how it is distorted.

In the spring of last—this year there was a meeting at Mote Laboratories in Florida. It was attended by—I attended it and so did, from here, Dick Bruno and Jim—Francisoni from the state. At that time Schafer was there, everybody was there from the National Marine Fishery Service. They divided the group up into committees to discuss the various aspects of the shark fishery, or the shark—sharks, in general, really, scientifically and commercially. The committee that I—that we had on sharks recommended essentially the North Carolina plan to preserve the fishery, and to prevent the destruction of a fishery which the National Marine Fishery Service, itself, had fostered and brought to fruition. And now they have destroyed the market. Absolutely destroyed. I will not go into the details. But I did want to get that in. I certainly strongly endorse Melvin's statement on the nursery and the Mid-Atlantic Council.

I am going to briefly go through my prepared statement. A brief introduction. I have only been associated with the commercial fishery industry since 1989. Prior to that, I owned a contracting firm that did 30 million a year and employed some 650 people. I sold the company in 1983, and left the company at the request of the new owners in 1986. That is a polite way of saying I got fired. Last year the company went out of business, but they did not—that did not impact the economy because there is many industrial plants, shopping centers, et cetera, being built as there would have been had my company stayed in business.

The same is not true of the fishing industry. Here people are being put out of business, a social and economic heritage is being destroyed unnecessarily in a misconceived pursuit of conservation. These people do not appear on the unemployed list, they are not subject to unemployment compensation or workman's compensation, and most do not have health insurance.

I was on the NC Board of Examiners of Electrical Contractors for some 25 years, and 12 years as chairman. We had a good relation with our constituents. When I got connected with the fishing industry, I could not believe the adversarial relations between the councils, the National Marine Fishery Service, and the fishing industry. I have worked to try to help in this regard, but to no avail. My congressman and senators have been most cooperative and tried to help, as far as I was concerned, as I can discern.

National Marine Fishery Service answers letters in a way that means nothing, take no action, and as far as I am concerned, they thumb their nose at congressmen.

Representative Jones, in his address to the House of Representatives supporting H.R. 2081, Fishery Conservation Amendment of 1990, stated, "Secretarial management of highly migratory species should involve a process that is essentially similar to the council process, with full public and industry participation." He also said, "U.S. industry should not be subjected to management standards that are inequitable or unreasonable when compared to those that are required of fishermen from other fishing nations that are harvesting the same stock or stocks of highly migratory species."

The Magnuson Act, as constituted, would not be bad; in fact, I do not think there is a fishermen, if he read this act, that would disagree with it. It is the implementation.

Highly migratory sharks are controlled to the point that not only are U.S. fishermen discriminated against, but the industry and the fishermen are being ruined. U.S. fishermen are now going to the Bahamas and Mexico to fish the same stocks of sharks that we have, and the product is being exported to the U.S. These captains are fishing on foreign flag vessels that are immune from U.S. regulations. Less than ten years ago—which I have covered that.

Size limits are put on snapper/grouper fishery, yet any size can be imported without any duty or restrictions. I do not advocate duty; I advocate fairness.

The fishing industry is not being consulted in the decisionmaking process, and no consideration is being given to the economic impact on the fishermen or fishing industry. In fact, in a meeting, Dick Bruno—who is a shark fisherman—Jim McCallum—who is a member of the committee, until a couple of years ago—and I had with Richard H. Schafer, Director of the Office of Fisheries and Conservation Management in the fall of 1991, Schafer commented that we had to realize that the National Marine Fishery Service was interested in the resource, and not in the fishermen or fish industry. This was in response to our concern of the flaws in the shark and other fishery management plans, and the adversarial relationship between the National Marine Fishery Service and the fishing industry.

The economic impact of the rules and regulations are not being considered. I am going to digress a little bit. At the TransPark they say—I get sick of hearing people say, "Only 28 houses, only 28 families will be displaced by the global transport and developing the 18 to 20,000 across." Well, outwardly, that is a very minuscule number of people to be displaced. But do they think that that is minuscule? No. They have lived there all their lives, that is their livelihood, and the same applies to the fishing industry. These

people have been in it all of their lives, and they say, "Oh, only \$100 million is going to be impacted," or, "Only \$10 million." Well, you cannot apply that to people's lives. There should be some equalization in this thing.

The councils are not represented in the industry. And I will just skip over that, because that has been completely covered. I will skip over the Endangered Species Act. It is being indiscriminately used against the fishing industry. Perhaps some wording in the reauthorization can address this problem. Jerry Schill can address this better than I can, but I certainly think this is a prime opportunity. A digression.

Every time you hear the Endangered Species Act, you think it is something like the Constitution of the United States. It cannot be—it is inviolate, there is nothing you can do about it. It is written in stone. And I cannot believe that if Congress did the Endangered Species Act, they certainly cannot put fairness into it. It is just unbelievable what is happening under the Endangered Species Act, not only to the fishermen.

Mr. MANTON. Mr. Greene.

Mr. GREENE. Am I out?

Mr. MANTON. Your stack of paper there is blocking the light.

Mr. GREENE. Well, I did that intentionally, see.

Mr. MANTON. I do not want to hit the gavel. What you are saying is important.

Mr. GREENE. OK. Well, one other—just a quick comment. I have attached a letter to Dr. Kasarda, which I hope that you will have an opportunity sometime to read. Thank you. I am sorry I ran over.

Mr. MANTON. Thank you, Mr. Greene. No problem. Mr. Tatem?
[The statement of Mr. Greene may be found at end of hearing.]

STATEMENT OF DAMON M. TATEM, JR., OWNER, TATEM'S TACKLE BOX, INC.

Mr. TATEM. Good morning. Thank you all for inviting me and allowing us all to testify here about this thing. It is very important.

I would like to address some of the concerns of the many recreational fishermen and environmentalists in my area regarding the reauthorization of the Magnuson Fisheries Conservation Management Act. One of the main areas of my interest over the past several years has been our local sound and ocean water quality, and the protection of primary and secondary nursery areas which provide habitat and food for most of our coastal species during some stage of their lives.

It has been my observation that complaints about degradation of water quality and the consequent deterioration and eventual destruction of habitat made by North Carolina Division of Marine Fishery staff and the MFC have generally fallen on deaf ears when directed to state and Federal regulatory agencies. Only recently there have been signs of increased cooperation between the North Carolina Division of Environmental Management and our Division of Marine Fisheries.

Related to the coastal problems in North Carolina, I see the need within the Magnuson Act for the provisions to offer more protec-

tion for fisheries habitat. This is absolutely essential to the recovery of our fish stocks. As I understand it, the Magnuson Act authority extends only to making recommendations to government agencies. These recommendations are generally ignored. I believe that the council should have some sort of formal authority to enforce the existing marine pollution statutes. Additionally, studies should be undertaken on the amounts and types of habitats necessary to sustain the viability of a species, gear impacts on bottom habitats, and suitable methods for protecting essential habitat areas. I feel eventually it will become necessary to establish marine sanctuaries throughout the EEZ to protect habitats from the adverse effect of some current harvest practices and other types of exploitation.

Another area of my concern is the membership of the councils. It seems to me that it is very important to appoint individuals who will put the resource first and foremost above the interest of their constituents. It is imperative that these appointees are totally dedicated to the protection and enhancement of marine fisheries resources. I do not feel this has always been the case.

I also feel that the council should have additional members from the ecological and environmental committees who will have as their only concerns, the resource. The appointment of these members should be based upon their scientific backgrounds. I think they should also be chosen by the National Academy of Sciences or some prestigious outfit that no disrespect can be shown to the choices.

There seems to be a great amount of public sentiment that conflicts of interest exist on the regional councils, as on our own necessary Marine Fisheries Commission. These conflicts have greatly damaged the credibility of these councils, and consequently reduced their support and effectiveness. Perhaps a more rigid requirement for appointment and clear guidelines for conduct should be instituted. Certainly any council member who has a direct financial stake in a fisheries decision should excuse himself from the vote on the issue.

Many council decisions in the past have been controversial, and have attracted extreme criticism from all quarters. Perhaps some sort of final reviewing authority composed solely of individuals with scientific backgrounds should be formed to review and approve recommendations. An independent group of this type could guarantee sustainment of a fishery before the total allowable catch recommendations were implemented.

Another area of serious concern to me is data collection. Important decisions are being based on old data, biased data, or in some cases no data at all. There needs to be a joint effort by the Federal Government and state fisheries departments to standardize data and avoid duplication of collection efforts. The data collection process I see on a recreational level along coastal North Carolina relies largely on conjecture, a system of random dockside samplings and, in some cases, aerial surveys. The lack of a salt water licensing system in my state makes it impossible to determine the number of anglers actually utilizing the resource. Even more unsettling to me is the emergence, over the past couple of years, of recreational anglers withholding information from fisheries personnel. In my area,

recreational tuna tagging efforts have almost ceased due to the fear that statistics will result in a closure or reduction of the yellow fin tuna fishery by the National Marine Fishery Service.

The Magnuson Fishery Conservation and Management Act has been successful in many ways. It is an essential management and regulatory tool, but it needs periodic adjustment and updating by the United States Congress to ensure its continued vitality and direction. Without some necessary changes, public confidence will continue to erode, and the support necessary to sustain the continued viability of the program will be lost. I think a lot of problems have been created by the striped bass regulations, at least in my area. I think people do not understand why they cannot catch a striped bass, any amount of striped bass in the sound, and I think this has transferred itself over to the tuna fishing business. I mean, they just—they do not trust anybody anymore. Basically, that is it. Thank you.

Mr. MANTON. Thank you, Mr. Tatem. You were just under the clock there.

[The statement of Mr. Tatem may be found at end of hearing.]

Mr. MANTON. Dr. Garrity-Blake, we have heard suggestions that councils should be required to have a sociologist to serve as a socioeconomic adviser in the same way they currently have experts to assist them on stock assessments. Is that a good idea, or do we need to do something else to ensure that the human cost of regulations is properly evaluated?

Ms. GARRITY-BLAKE. Yeah, I think that is an excellent idea. I highly recommend a socioeconomic adviser, whether it be a sociologist or an anthropologist, who can assess the impact of regulations on real human lives and committees.

But there is a lot of changes that could be made in addition to that, that would improve the situation, in general. We need improved communication between policymakers and the commercial fishing committees: families, fishermen. If you could set up a structure—if the management councils could set up a structure to have periodic meetings, not just the hearings, field meetings on the turf of commercial fishermen. Sounds like a small detail, but it makes a big difference. A lot of fishermen feel very intimidated traveling to such places like the Sheraton Resort, where the last council meetings were here last week. If you could have meetings in Wanchese, or Atlantic, or fishing committees such as that, perhaps attended by just one member of the council. OK, that could be of a great help. And involve the fishermen in the management, in the development of management plans.

Fishermen—no one knows the fisheries environment more than the fishermen. They are out there every single day. Yet oftentimes their knowledge is dismissed as irrelevant; or, worse yet, it is dismissed as folklore. And this is a waste of a very knowledgeable resource which could help tremendously in fisheries management.

Mr. MANTON. Some people have come up with the idea of compensation for displaced fishermen. What do you think about that?

Ms. GARRITY-BLAKE. I think that is important, too. I think whichever way it goes, fishermen need more support than they are getting. Magnuson Act talks about promoting commercial fishermen. Well, I feel like the industry probably does not feel like it has been

very promoted. Fishermen feel like—how should—I am speaking for fishermen here, but many feel that the government has turned their back on the fishermen.

Now, we may live in times where it is simply not socially acceptable anymore to harvest this resource or that resource. You know, it is not too different from the—what is going on with the timber industry in the Pacific Northwest. If that is so, if you do not want—if policymakers do not want a fishermen to harvest a specific fishery, they should pay them not to fish, or buy their gear, or install programs to retrain fishermen in work that is both meaningful to the fishermen, socially responsible, socially acceptable. I highly recommend those programs be put in place, too.

Mr. MANTON. Thank you. Mr. Greene, as I mentioned earlier, I met with Rollie Schmitt, the new fisheries AA. He seems genuinely committed to ending what you describe as the adversarial relation between NMFS and the industry. Have you detected any change with the new council appointments and leadership?

Mr. GREENE. Not really. I do not think there has been adequate time, really, to see much change or—in areas. I was very disappointed, after the Mote Laboratory hearing, which was an international shark symposium.

Mr. MANTON. I think my Subcommittee staff director, Jim Mathews, who could not be with us today because he is in Europe or on his way to Europe, was at that meeting.

Mr. GREENE. I was very disappointed. There was absolutely no follow-up whatsoever on that when the shark plan was implemented, when the rules were made, or even when the advisory council got together to reconstitute it or see if there were any changes.

Mr. MANTON. You have a kind of “wait and see” attitude. You believe that enough time has not passed yet to assess the new Administration?

Mr. GREENE. Well, as far—I have not been to talk to him at all, as yet. I would welcome the opportunity; I would like to see a change in attitude. Very much so. I do not mean—there is not a fishermen that is not in favor of conservation of the resource. Not a one of them.

But the way that it is gone about, such as the way I have—gave an example in my testimony about the trap fishing, which they passed a rule which said that you can only have—if you went trapping, the only thing you could have was a trap. And you could not have any snapper/grouper things, or you could not have sink nets on your boat. Well, you put a sink net on a boat when you are going trapping, too, is the problem. And they—after—a year later, after the rule went into effect, they changed that rule. But that was not—it was too late.

There should be a critique of these rules with people who are involved in the process—I mean, in the fishery. Should be a critique of these final rules before they are implemented. Some sort of critique with the people who will know what the result would be.

Mr. MANTON. Thank you, Mr. Greene.

Mr. Tatem, as a resident of the Outer Banks you are certainly aware of the difficulty of balancing development and habitat. Would you care to elaborate on the role councils should play in the role of habitat protection?

Mr. TATEM. I think the councils, as I said when I addressed you earlier, need to have more—the councils need to have more power as far as marine pollution laws are concerned, have more input. When I cited North Carolina, I think that the Division of Marine Fisheries, Dr. Burkhalter, now sits in on Environmental Management Commission meetings. And I think maybe some crossover members or something along those lines, where everybody could keep track of what everybody else is doing would be very important. I feel that is an integral part of integrating the system, so that there is more responsiveness on the part of the EPA to the interests of the councils and the fisheries organization, itself.

Mr. MANTON. Thank you. Mr. Lancaster?

Mr. LANCASTER. Thank you, Mr. Chairman. And thank you for your testimony.

First of all just a comment to you, Dr. Garrity-Blake. Your testimony seemed to indicate that you felt that commercial fishing interests were not adequately represented in the testimony today. And I apologize for that. But I think if you will take a look at the witness list, you represent commercial fishing interests through the auxiliary; Mr. Greene is a commercial fishermen; Joey Daniels and Captain Barr make their living at commercial fishing; and, of course, Jerry Schill and Melvin Shepard represent commercial fishing interests. But just so that we will not be criticized for not allowing commercial fishing interests to have their voice here, I hope that you will encourage anyone who feels that they have something to say on this to submit their comments for the record, and I am certain the chairman will keep the record open—

Mr. MANTON. Without objection, we will keep the record open for any submissions.

Mr. LANCASTER [continuing]. for their comments. And let me assure you that we were trying to achieve balance, first of all; but also to give commercial fishing interests a real voice. And I think six people is pretty much giving you voice. So I just wanted to make that comment to you, and to encourage any who felt that they were excluded from an opportunity to speak, to have them submit whatever they like for the record.

Ms. GARRITY-BLAKE. It is—but a lot of people confuse fisheries dealers and organization representatives as being fishermen, when—

Mr. LANCASTER. But they are hired to be spokesmen for that.

Ms. GARRITY-BLAKE. Yeah, and I appreciate that. But it would just have been nice to have somebody who is out there every day, living with, you know—But perhaps at a later date.

Mr. LANCASTER. Now, both you and Mr. Tatem indicated the need for different representation on the council from what we now have. If we are to address that in Magnuson reauthorization, I wonder if each of you—and Oscar, if you have any thoughts on this, too, you may give your response—how would you set up the council? Would you, in fact, mandate that there be “X” number of this interest, and “X” number of this interest, and “X” number of that interest, or some other fashion of achieving balance and greater representation on the council of interests that you feel are important to be represented? You may start, Dr. Garrity-Blake.

MS. GARRITY-BLAKE. Well, I do not think the problem is so much as, you know, what interests are represented, but the problem is in actually finding out what is going on, and gathering the adequate data. I think there is inequalities involved in the commercial—you know, the everyday commercial fishermen, the small scale fishermen and the larger scale fishermen who may not have the education, the political savvy to attend meetings, to travel to the locations of the meetings and that sort of thing. I think the council, as set up now, is good; but, in addition to that, more effort to go into the committees and to find out exactly what is actually happening in the committees would be of benefit.

MR. LANCASTER. Damon, do you want to comment on the make-up, per se?

MR. TATEM. Yes, sir. I do not—I do not see how you could have any—I do not see how you could have any group that would be functional unless you had the commercial fishing sector represented. I mean, by commercial fishermen. Maybe more actual, physical, on-the-job commercial fishermen would be better in the long run; but, then again, shippers and packers and the people that are right directly involved in the industry should have a feel for it. Most of them have run a trawl boat.

I just feel like that there should be some heaviness on the environmental side of it for habitat protection, since that is critical. And the TACs, the way these things are set up, to maybe use that as a forum for more protection, because we are in trouble. I mean, we are in trouble in North Carolina, and have been for some time.

MR. LANCASTER. Well, would the councils having seats distributed by states, and nominations that come from governors, how would you have this environmental representation? Would you have one person from each state representing the environmental perspective, or would the Secretary of Commerce have an at-large member representing environmental interests? How would you achieve that kind of goal?

MR. TATEM. I think that if you got these groups too cumbersome, I mean, the more members you get the worse—everything I have ever been on, the bigger it got, the worse it got. That if you pick somebody at large and had them recommended by a prestigious group, as I say, National Academy of Sciences, and put them on there that would look at a narrow corridor of resource, I think that would be better. You would cut down on a number of people; you would not have so many people.

MR. LANCASTER. So this would be a Secretary of Commerce kind of appointment, rather than nominations from the governor?

MR. TATEM. Yes, sir.

MR. LANCASTER. And perhaps would be one for counsel, without regard to where their home was?

MR. TATEM. I think so. I think that would work better.

MR. MANTON. If the gentleman would yield, I am informed by counsel that we have one environmentalist on the whole array of councils, and that is in the Mid-Atlantic Region, and it was someone appointed by Governor Cuomo in New York. But there is definitely a dearth of such people on the councils.

MR. TATEM. You know, I think it is absolutely necessary, considering the situation with the fisheries.

Mr. MANTON. I will yield back to the gentleman.

Mr. LANCASTER. Thank you. One last question. Oscar, you, of course, demonstrated the outrageous amount of paperwork that was generated in just studying the shark problem. But several people have mentioned the inadequacy of data collection, and perhaps data use, if it has been collected. With the shark fishery problem, of course, it went back to a time, and actually did harm to the fishery, possibly, by recommending a more aggressive entry into a fishery that then very quickly became depleted, and now we have got the opposite problem of people being in a fishery that they have got to get out of. Could that have been avoided if there had been—either been a better data collection, or use of the data that they had? Looks like, with that stack of papers, there would have been adequate data. Was there, or is that part of the problem?

Mr. GREENE. No, there very definitely was not. And, in fact, when this plan first came out or when we found out it was going to be regulated, the North Carolina shark fishermen got together and submitted a plan. And that plan was—as far as control of the fishery, was very good, in my opinion.

Now, secondly, from the very first shark plan on I have reckoned, in this age of proliferation of information, how can they say they cannot get data. When we went to Honduras to fish, the Honduran government required us to submit data. We had so much data on what each individual fishermen caught every month that we could not even print it all out for the—And you know who helped us develop it? A secretary from the National Marine Fishery Service, in her off-time, came in and drew this program. If they were to go to a credit card system of reporting, require the fish houses to do the reporting, draw up a data processing plan, supply it to each one of the fish houses and require them to submit it monthly, they would have all the data they could possibly want.

And do not put—I do not know if you have ever seen the reporting forms that the National Marine Fishery Service and the councils use, but it is archaic. It is 1980 stuff. Big, thick books that they have got to fill in and send in each month. It is absolutely ridiculous, and they are requiring the fishermen to do it. The fish houses, the people who receive the fish should do it, and I will guarantee you we could put it into effect in less than six months.

Mr. LANCASTER. But, of course, data collected but not used is useless data, and an expense that should not be incurred. Is there a problem with using the data they have?

Mr. GREENE. The data they have is based on landings. You cannot adjudge a fishery on landings. Because if you do, you are ignoring the weather, you are ignoring the shift from one fishery to another. It has to be on data of catch per unit effort.

Even when we first started fishing in sharks and I had a few boats, we did it on data per unit effort. It is absolutely ridiculous to do it any other way, because the fishermen may switch from one to another, the weather—

Last winter, if the National Marine Fishery Service had judged the landing on snapper/grouper by the number of landings, they would have said the stock is gone. It is absolutely depleted. Because I bet in a period of four months, I bet they did not get one month of fishing in.

Mr. LANCASTER. Because of the weather, not because of the fishery?

Mr. GREENE. Because of the weather, that is right. Not because of the fishery. And they base it on total landings, instead of landings per unit effort, and it is ridiculous—it is ridiculous. It is like basing your volume on your total if you are only open one day a week.

Mr. LANCASTER. Thank you very much.

Mr. MANTON. I thank the panel. And we will move on to our last panel, panel number four. Mr. Joey Daniels, Treasurer, Wanchese Fish Company; Sgt. Major—excuse me, Captain Earl W. Barr, Chairman of the Board of the Fish Marine Corporation; Mr. Charles Fearing, Chief Executive Officer, Top Fin Limited; and Mr. Carl Hagenkotter, III, Commercial Fisherman.

Captain BARR. Mr. Chairman, I could not let that part pass without an extraneous comment. I am delighted to see that you still recognize that once a Marine, you are always a Marine. And I was delighted to hear that the new assistant—

Mr. MANTON. It is like when you are a Catholic; once a priest, always a priest.

Captain BARR. That is right. And we are delighted to hear that Rollie Schmitt is an ex-Marine or former Marine, because maybe he will understand some language now.

Mr. MANTON. Good. Well, good to see you.

Captain BARR. Thank you.

Mr. MANTON. We will start off with Mr. Joey Daniels.

Mr. DANIELS. Mr. Chairman, Mr. Lancaster, we would like to thank you for giving us this opportunity to speak today. I was prepared to testify behind Capt. Barr, so, let us see.

Mr. MANTON. Would you want to defer to Mr. Barr or—

Mr. DANIELS. Yes, sir, I would like to defer to him first.

Mr. MANTON. OK.

STATEMENT OF EARL W. BARR, CONSULTANT TO WANCHESE FISH COMPANY, INC., AND CHAIRMAN OF THE BOARD, FISH MARINE COMPANY, INC.

Capt. BARR. Thank you, Mr. Chairman, Mr. Lancaster, and members of the subcommittee, professional staff, ladies and gentlemen in the audience out there.

For the record, my name is Capt. E. W. Barr, and I am appearing as a consultant to Wanchese Fish Company, Incorporated, Wanchese, North Carolina, and as Chairman of the Board of Fish Marine Company, Incorporated, of Urbanna, Virginia, which is a high seas tuna operation fishing worldwide. And I am accompanied, obviously, by Mr. Joey Daniel, Treasurer of Wanchese Fish Company.

We appreciate this activity as—this opportunity as active commercial fishermen, both domestically and internationally, to testify on the fishery management program established by the Magnuson Conservation and Management Act. We come as true commercial fishermen, not as lobbyists or lawyers or as elitist sportsmen; simply as men of the sea and for the sea.

Wanchese Fish Company is owned and operated by the Daniels family, with 11 brothers active in the business. Before them, their father and their grandfather. Since 1936 they have been a major supplier of fresh and frozen Atlantic fin fish and scallops, and in recent months supplier from our own vessels of Alaskan scallops.

Wanchese fishes 123 fishing vessels to them, employing 477 crew members, plus another 100 shoreside personnel. Fish Marine is engaged in international joint fishing ventures with foreign private companies, governments, and in the international marketing of fish, including that produced in U.S. waters.

Mr. Chairman, I want to take special note that we applaud your statement that you intend to listen with an open mind to all interested parties, and that commercial fishing interests shall have an equal opportunity to make its data, experience, and ideas a meaningful part of the process. We are not enemies of conservation and environmental interests. Our livelihood depends on our adequate resource. To overfish a resource is to cut our own throats. To allow our resource to be environmentally damaged is unthinkable to us as commercial fishermen.

We are not the enemies of recreational fishermen, for we believe and encourage people not only to eat fish, but to enjoy the sport of recreational fishing. We are opposed to those elitist sports fishermen who try to limit the fishery to a privileged few.

Mr. Chairman, as a former Marine and many times since then who has risked his life countless times to defend our nation against its sworn enemies, I deeply resent those who would regulate our industry and our citizens from full participation in our fisheries. Our fishery resource is owned by all the people of the United States, not just a privileged few.

Our written testimony covers management process—bear with me with all this—conservation; enforcement; property rights; and fees. We will bypass that because it is a matter of the record, the written testimony.

Mr. Chairman, in summary we suggest and recommend the following changes in the act for serious consideration. Much of the data as regards current over-utilization of resource is highly suspect. The act should provide for a national study and stock assessment conducted by independently known, internationally and nationally known fish scientists to get at the facts before any strict quota is set on a particular species. The Secretary of Commerce should have the clear authority to amend, alter, or overrule any FMP plan based on erroneous data, conflict of interest by council members, or serious economic loss to the commercial fishing industry.

Three, the act should require timely data on which any quota may be set regarding a particular species of fish.

Four, the act should provide, in strong terms, for equal representation by commercial fishing interests on councils. The act should require in strong terms that all voting members on councils should be required to have demonstrated expertise in the area represented; i.e., commercial fishing, recreational fishing, or the environment.

The act should provide that all decisions made by council—or by the process—i.e., the councils, regional directors, and National

Marine Fisheries and the Secretary of Commerce—that affect the economic health of the fishery that are—an economic impact statement must be presented and discussed at open hearings.

The economics of the fishing committee, which involves countless people, their lives, their fortunes, and their futures are tied up in these matters. We have suggested other changes in our previous testimony before council hearings, and in the written testimonies as a matter of record.

We thank the chairman and the committee for its attention to this testimony. Mr. Daniels and myself, after he speaks, will be ready to respond to any questions from the committee to the best of our ability and knowledge. Thank you, Mr. Chairman.

Mr. MANTON. Thank you, Captain. Mr. Joey Daniels.

[The statement of Captain Barr may be found at end of hearing.]

STATEMENT OF JOEY DANIELS, TREASURER, WANCHESE FISH COMPANY, INC.

Mr. DANIELS. Thanks again, Mr. Chairman.

As indicated by Capt. Barr in his testimony, we appreciate this opportunity, as active commercial fish harvesters, processors, and marketers of fish domestically throughout the United States, to testify on the Magnuson Conservation Act. In addition to those items testified to by Capt. Barr, we draw your attention to the following that is adversely affecting our company and our industry.

The Magnuson Act should be amended to include a finding, a purpose, and a policy concerning the validity of the economic importance of and the social importance of small and family oriented fishing operations. The independent fishermen, the small boat owners, the operators, the small processing marketing firms, those that have passed on a fishing tradition from one generation to another are an invaluable part of the fishery system. These fishermen and their families are also an important part of our coastal committees from Maine to Florida. They represent what America is supposed to be about: the ability to earn a livelihood which affords a home, and a college education for their children.

The regulations established under the act by the NMFS and the management councils are today denying us of this right.

Number two, the act states, "Conservation and management measures shall, when practical, promote efficiency in the utilization of its fishery resources, except that no such measure shall have economic allocation as its sole purpose."

An economic impact statement should be required before any management plan or gear regulation plan or reduction in quota is established, as indicated.

Since 1989 the seafood industry has lost over \$700 million in sales; nearly 1300 seafood businesses have failed; and more than 22,000 jobs have been lost. These losses must be halted if we are to have a financially viable seafood industry.

Much of this has been caused by regulations that have no real impact on conservation. For example, quotas are estimated based on out of date and sometimes false data, resulting in quotas so low that it is impossible for the boats or the packing houses to make a profit. A solid economic impact statement before such rules or

quotas are established would go a long way toward curbing this situation.

Habitat consideration should be added to fisheries management. Wanchese does not believe that the effects on habitat degradation have been fully explored. For example, a recent study at the Northeast Fisheries Science Center shows that water pollution directly contributes to the mortality of embryonic of young mackerel, winter flounder, and other species. However, this is merely represents the tip of the iceberg in terms of potential effects of habitat degradation is having on fisheries. We believe inasmuch as 55 to 65 percent of the alleged overfishing is actually due to—just bear with me a second. I lost my—oh. To habitat degradation such as chemical runoff from land. Marine biologists are well aware of the problems caused by the loss of wetlands by coastal developers, the problems of nutritional overload and toxic algae blooms which results from agriculture runoff and human sewage dumping; damage from industrial toxins and heavy metals which are either dumped or washed into streams, bays, and the ocean itself, among other factors.

It is time to stop blaming commercial fishing for stock declines. We are not the cause of this destruction, we are the victims. Insofar as we see, management taxes are not doing anything to address these problems today. All those costs are falling on the backs of the commercial fishermen and the fishing industry.

Mr. Chairman, this concludes my statement. Mr. Barr and I will stand by to answer any questions you may have. Thank you.

Mr. MANTON. Thank you, Mr. Daniels. The next witness will be Mr. Charles Fearing.

[The statement of Mr. Daniels may be found at end of hearing.]

STATEMENT OF CHARLES FEARING, TOP FIN COMPANY OF WANCHESE, NORTH CAROLINA

Mr. FEARING. Good morning, Mr. Chairman, Congressman Lancaster.

My name is Charles Fearing. I am with Top Fin, Limited, of Wanchese, North Carolina. And I want to thank the committee for taking time to come here and talk with us about the Magnuson Act.

Top Fin is a company that was organized to handle domestic and foreign sales of seafood. The company has two locations, and is equipped to pack and ship seafood from the Hatteras facility, and to process and ship from the Wanchese facility. Our time is short, so I want to make a few brief points.

One, we must help the commercial fisheries. Seafood is an important part of the daily food supply of the United States. Statistics from the Library of Congress show that U.S. commercial fishing produced 8.5 billion pounds of seafood worth \$3.8 billion. While the United States is the world's largest exporter of food, our country imports about half of our seafood, and as much as 80 percent for some species. We do not lack the resources to be self-sufficient. We have failed to make the commercial fishery an integral part of our national priorities as we have other food production. In the huge Federal budget book there are more than 120 pages of programs in

the Agriculture Department to foster farming and food production. Fishery programs in the Commerce Department have less than five pages of programs, most of which are unfunded.

Secondly, each of our fisheries have problems. In the mid-Atlantic we are alarmed about the low blue fin tuna populations. To the north, in New England, cod, flounder, and haddock populations have dropped. And along the Southern Atlantic, grouper and tile fish have declined.

Our business has to be regulated for the sake of prosperity; but please do not put us out of business. Help us until we can create sustainable harvests. This period for commercial fishing—excuse me—fishing is like the Dust Bowl for agriculture. We need change, but we need to make change for the better. Our concerns about regulation is that it makes the cost of our production of seafood directly more expensive to the consumer. This hurts with us competing with foreign imports which have no regard for the marine environment or resource management, and little interest in sanitary and wholesome seafood handling practices.

Third, the division of the fishing committee. Unfortunately, there is a growing tension between the recreational and commercial fisheries. It is a question of economics. Recreational anglers caught an estimated 285-1/2 million in fish in 1992. On this retained harvest of 164 million pounds, those anglers spent 9.8 billion in pursuit of their sport. Those fish dinners are very expensive per pound; about \$59.75. As we said earlier, U.S. commercial fishing harvested 8.5 billion worth 3.8 billion, for an average of 45 cents per unprocessed pound. This is an economically competitive source of protein. However, due to the enormous productivity of commercial fleets, our numbers are few. Recreational fishing has millions of advocates.

The recreational angler thinks the commercial fisheries have overfished their stocks. The commercial fishermen think the recreational demands resemble a hunter telling a farmer that he must grow corn instead of alfalfa, because the corn promotes more deer for hunting. Both attitudes are shortsighted, but they play into a greater fish management problem.

Since we are here to discuss the Magnuson Act, here is an example. North Carolina has no votes on the Mid-Atlantic Council. Since state governors make nominations, the politics most often reflects the more numerous recreational anglers, to the detriment of the commercial fisheries. Commercial fishing has almost no genuine representation.

In closing, American commercial fishing is facing a horde of problems: foreign competition, financing, depleted resources, and an increasingly negative image. Commercial fishing is a difficult and dangerous way to put food on American tables, but we do it at a reasonable cost. We have chosen this way of life, and we provide value to our country. Please help us to continue our work of providing wholesome food. Let us work together to improve the fisheries resource and the marine environment for the benefit of everyone. Thank you.

Mr. MANTON. Thank you, Mr. Fearing. Mr. Hagenkotter?

[The statement of Mr. Fearing may be found at end of hearing.]

STATEMENT OF CARL HAGENKOTTER, COMMERCIAL FISHERMAN

Mr. HAGENKOTTER. Thank you, Chairman Manton.

Mr. Chairman, ladies and gentlemen, I appreciate your invitation to speak on behalf of many citizens who contribute to the local and national economy who will be significantly damaged financially by any funding of this act. The problem is not the act, itself, but how it is interpreted by the people getting the funding.

I realize that your former colleagues had no intention of devastating the commercial fishing industry when they wrote the Magnuson Act. In fact, their intention, to promote the commercial and recreational fisheries, was meant to be a help to these fisheries. The opposite has happened. In the southeast region we now have five government agencies competing in a legislative frenzy to see which fishery they can completely eliminate. Their rules and regulations are non-stop. Their deviations from their own rules are no longer a surprise. Their calculated destruction of data that does not go along with what they want to do barely gets the blink of an eye anymore. Their ability to keep people off the councils who would represent the commercial industry rightfully is legendary. Their ability to expand problems and make them greater than they really are is amazing. Their ability to control negatively the development of new equipment that might help the industry control the problems they are raising is absolutely ludicrous. Their ability to force inefficient equipment on the commercial fishermen, require its use, and block any attempt to modify it is unbelievable. The final unbelievable act is that it could happen in America to people who are mostly uneducated and only want to make a living, feed their families, and be respected in their committees.

No long-term solution will save the commercial fishing industry. A message needs to be sent to the South Atlantic Fishery Management council, the Gulf Fishery Management Council, the National Marine Fisheries Service, the National Marine Sanctuary, and the Fish and Wildlife Service. This message should say that unless these groups get in line with the original spirit of the act to promote the commercial and recreational fisheries, that no funding will be coming.

Something needs to be added to this act to tell these groups what your intent is when you state "to promote the commercial and recreational fisheries." We, the fishermen, believe you when you say this. These groups I mentioned above do not understand, and have not obeyed. They continue to regulate us out of business when we are not the problem. In south Florida we know the problem is pollution and sewage. Thanks to your help, we are now moving in the direction of cleaning Florida Bay. This is very important, because south Florida will have no fishery unless this is done quickly. The point is that this pollution has caused a decline in the fishery. We, the commercial fishermen, have been punished for what other groups have made the major contribution. It is time to stop punishing the horse for the barn door being left open.

My personal problem with these groups centers around the National Marine Fishery Service who regulates and gives information to these councils. It was my misfortune to run into Dr. Fox, the head of the National Marine Fishery Service at the time. Dr. Fox is

presently in trouble for destroying information that would have been helpful to commercial fishermen.

Anyone who says the boss's attitude does not extend to his employees is very wrong. I tried to develop and use a unique trawl system that would exclude all turtles, not lose shrimp, be more economical to tow, and reduce by-catch. For this noble endeavor I was arrested, charged with a crime one year and three months later, tried and convicted, and fined more money than I had. At the same time I was being tried and convicted, I was funded \$16,000 to do a three-month project. This money was from SK funds which was provided by you, the Congress of the United States.

The National Marine Fishery Service, during this time, did everything in its power to keep me from succeeding. How I came through it I will never know. In this process I gained the attention of knowledgeable people who understood what I was doing. With those people and a congressman behind me, I succeeded in getting a test of my device.

In order to test my device, I needed to take it out on the ocean and tune it up after it sat on land for months. I was arrested, ordered to the dock, and my catch was confiscated. This would have done a lot for the research. The bad part is that I did not get the new excluder on correctly, due the being arrested, and failed the test by capturing four turtles. Part of this was because the turtles only had five minutes to get out.

This did not stop me, and I went back to the old design. This time I ran 12 out of 12 turtles in 19 seconds or less. This makes the Hagen Trawl the fastest turtle excluder in history.

You are more than likely saying to yourself right now, "What is the problem?" It takes 22 turtles to pass the test, and the National Marine Fishery Service cut the test off at 12, even though they had the time and the turtles to run the test. A few weeks after this, Judge Dolan informed me I was a turtle criminal. This just added insult to injury.

The turtle panel who reviewed the test had high praise, and recommended that I pursue this concept. I do not think they realized that the only way for me to pursue this was from a jail cell. This is how the National Marine Fishery Service rewards innovation.

The complete story, along with documents, is in my letter to the President. I would like to urge you to have a meeting in south Florida on the Magnuson Act. I believe that is very important. There is a lot of people down there who would like to have the same opportunity that I just had.

Thank you very much for listening to me. If you have any questions, I will be happy to answer them.

Mr. MANTON. Thank you, Mr. Hagenkotter. That concludes the testimony of the panel. We will move to some questions.

[The statement of Mr. Hagenkotter may be found at end of hearing.]

Mr. MANTON. I will put this to both Mr. Daniels and Capt. Barr.

You both point out the lack of good data. How can the commercial fishermen help us gather more accurate data on fisheries?

Capt. BARR. Thank you, Mr. Chairman. We will respond specifically to that. I would like to make an extraneous remark here.

I have heard a lot of testimony here about the purpose of establishing the Magnuson Act. I was involved with Tommy Downing, who was First Virginia District and Chairman of Merchant Marine and Fisheries Subcommittee early in the days when we were pushing for this, pushing for the Magnuson Act and its 200 mile EZ, including trying to establish a fishermen's bank. So the real purpose of the Magnuson Act, in plain English, was to run foreign fishing out of the U.S. 200 mile economic zone, and to bring some prosperity and some financial security to the commercial fishing industry of the United States, and to the recreational issue.

Now, specifically to your question. Data collection is something that has to be done on a timely basis. A regulation or a rule that says that every vessel shall carry a log on his landings, plus a log from every seafood processing house with the data to be picked up weekly should provide a considerable amount of hard data.

The problem now is that, for example, I called Woods Hole yesterday or day before yesterday and asked for the landings up to date. They had the commercial landings up to October 16th. Recreational landings had not been tabulated since last February. So we do not know how much the recreational fishing has caught in the rather loose system that they use in collecting that data.

There are other methods of getting at this data. I joint ventured with the Soviets in high seas tuna fishing for seven years. They were very sophisticated in the collection of data. They used all of their Barrett bombers coming down the East Coast of the United States to do sonar soundings; they used their submarines to do sonar soundings; and they put the hydrographic ships up and down the East Coast of the United States. In addition to that, even right today, they have sophisticated scientific techniques of using the satellites to do imagery, photographic, and by water temperature, et cetera, et cetera, they determine very accurately where fish are on what date and what depths and at what temperatures. And what species.

So we have a sufficient military establishment, we have a sufficient governmental establishment Navy that could help greatly in accumulating accurate data on the availability of fish.

Mr. MANTON. Captain, you were here when Mr. Greene testified, and he mentioned another method, aside from landings, called, I think, unit effort.

Capt. BARR. Yes.

Mr. MANTON. Could you speak to that?

Capt. BARR. He has a good idea, the unit method. The problem is, is not only the collection of the data accurately, but to get it on a timely basis, that it can be incorporated into the problems of a fishery. Anything that would result in speeding up the data and the assimilation of it before hard and fast decisions are made about whether a fishery is overfished or whether it is on the downside or the upside. Because there is another side to this thing. To give you a specific example, summer flounder. Data originally showed that 1989 was a bad year and that flounder was being grossly overfished, and they are still promoting that. But every year since 1990 the landings of flounder have increased by 50 percent; or, in other words, 200 percent increase in the volume of flounder available for landing. And that is the hard question on your data problem.

I might add one other thing, Mr. Congressman. I realize that you are not—you are a good navigator, but we probably could use you aboard some of these fishing vessels. They—sometime back when we were testifying before the Mid-Atlantic Fishery Management Council, we took issue with the data. I called Woods Hole and talked to the biologist in charge of putting the data on the summer flounder. I asked him, I said, "Sir, are you dragging anyplace to determine at various locations how much flounder is there?"

"Oh, yes."

"Well, what type of nets are you using?" And he very proudly announced that he was using a roller rig. So I said, "Sir, are you aware that a roller rig is three feet off the bottom of the ocean, and the flounder are laying on the bottom and looking up and saying, what jackass is trying to run that net over here and catch us?"

Mr. MANTON. Well, Mr. Daniels, I have a little bit of time left. Do you want to expand on Capt. Barr's comments regarding data collection?

Mr. DANIELS. Yeah, I would like to—probably with you asking about Mr. Greene's testimony, a lot of your fishing boats fish in different types of weather. So if it is too windy for them to work offshore, well, then, they will work, you know, the beach in different area. So that the catch per vessel should be in there, and rather than the total number of fish, so you can check that effort.

But I think there is a—that I did not know the cat bar was seen by the Russians, but I have always said that fish do follow trends. And I believe the numbers that the National Marine Fisheries have should go back and check from 1900 until present and see what fish were caught, what the temperature of the water was caught, when they were caught, and I think you will find that where your fish are going they are not being over-harvested as much as they are just—different streams or temperatures, are moving. Fish move and come by water temperature more than any other thing. That is what controls where they are going to be.

Mr. MANTON. Thank you, Mr. Daniels. My time has expired. Mr. Lancaster?

Mr. LANCASTER. Thank you, Mr. Chairman. And thank you, gentlemen.

Several of the other panels have commented on the need for representation with a voting member from North Carolina on the Mid-Atlantic Council. You mentioned that, Mr. Fearing, in your testimony, but Capt. Barr and Joey, I wonder if you have any comment on the need for representation on the Mid-Atlantic, since you primarily fish in mid-Atlantic rather than south Atlantic waters where you and your colleagues in that area have no voting representation on that council.

Mr. DANIELS. Yeah, I would, Mr. Lancaster. Yeah, we—well, our company fishes in both the mid-Atlantic, very little in the south Atlantic where we—and we are also into the New England, and then the north Pacific. And we do not have anything on these. And in North Carolina, which does produce so much of the species that we are being regulated on, we do need to have some representation from them.

And I would like to point out, on hearing—been hearing from the recreational and—side of this thing today, that maybe that

there should be commercial fishermen people onto any of these councils. I beg to differ with you. If you put 19 commercial fishermen on this panel there would be some good regulations, because you are not going to get three of the 19 to agree on anything.

Mr. LANCASTER. Also it has been suggested by previous panels that perhaps a more efficient way of collecting data would be through the fish houses instead of through the boats. Since all three of you have fish houses, I wonder if you would comment on either the efficacy of that, or any problems that might exist with placing the data collection and reporting at where the fish are actually ultimately landed, as opposed to the boat that is catching them.

Mr. DANIELS. North Carolina has just come up with a plan. I think it is going to start January 1, and it looks to me like it is going to be a good plan, that when you pack out I believe there is five or six copies, so you will have some for the state and the Federal. And they have checks and blocks on it to, you know, where this fish was taken, and the type of gear used, which is good information that we need.

The main thing that we need to stop right now is making more regulations until you get the correct data. And once you get the data right, then I agree we definitely need some regulations, but we do not need to keep making them and make the same mistakes we have been making in the past.

Mr. LANCASTER. So you see no problem with shifting the responsibility for data collection to the packing houses?

Mr. DANIELS. No, not at all.

Mr. LANCASTER. Do you, Charles?

Mr. FEARING. No, sir, I do not. I do not. And I do agree with Joey that the—that they should—I think the business definitely needs regulating. There is no doubt about that. And I have talked with some people in the state about doing a limited entry. But you need to do it properly with correct data, and right now just enforce the existing laws that are on the book, instead of enacting any more moratoriums or any more laws. The laws that are on the books will work sufficiently.

And I can give you an example about the shark fisheries. The National Marine Fisheries comes by the first month of—first week of each month to collect the prior month's data. And where it really hurts is down to the small individual fishermen. For instance, the shark—second half of the year shark quota came on in July the 1st. And this one particular fisherman had a hard time, borrowed \$22,000 to buy the necessary gear to go fishing, and he probably got ready to fish by the third week in July. And the fourth week in July they just closed the quota down. Well, there is just—there is one particular hardship to that poor fishermen that he just had no idea.

And then, after the month was over, then when the marine fisheries individual came by to collect the data, I just asked him, I said, "Please tell me, explain to me how that you can say that the quota has been caught up when you have not even collected the data yet."

And he just said, "That is the marine fisheries."

I said, "Well, thank you for being honest with me." But we do have to all get down the road together. I mean, commercial fishing, sport fishing, you know, it is an inherent right that we all have to make a living here in the U.S. And most of these fishermen, the reason that they do not attend meetings is much like the farmer; they just cannot afford to take the time off. If they are not out there working, then that is loss of income to them. And I really appreciate you all's efforts in trying to resolve some of these differences. I really genuinely do. Thank you all for allowing us to be here.

Mr. LANCASTER. Thank you for your testimony, and thank you, Mr. Hagenkotter, for coming up from Florida to offer your own perspective. Capt. Barr, before my time runs out, did you have something else you want to say?

Capt. BARR. Just a further comment on your question, Congressman. Every fish house is already burdened with Internal Revenue laws, state revenue laws that require you to produce a fish ticket. Alaska has a very well defined fish ticket system. And that is quite revealing, and a natural part of the progress of business to have that data available if the proper people would collect it.

Mr. LANCASTER. Thank you, gentlemen.

Mr. MANTON. I thank the panel. And, Mr. Hagenkotter, although we may not have any additional hearings in the Southeast this year, we will see if we can put something together for the early part of next year down your way.

Mr. HAGENKOTTER. That would be good. I think there is a lot of—

Mr. MANTON. Somewhere. New Orleans or Florida somewhere.

Mr. HAGENKOTTER. Well, you can come down and enjoy our sunshine. We would be happy to have you.

Mr. MANTON. That would be nice.

Capt. BARR. Thank you, Mr. Chairman. Mr. Lancaster.

Mr. MANTON. The Chair recognizes Mr. Lancaster.

Mr. LANCASTER. Mr. Chairman, we have finished a few minutes early with our panels. But I do know that there are some sports fishing interest and commercial fishing interests who are present, and I wonder if maybe we could take about ten minutes and offer an opportunity for one or more of these people to maybe have a minute to make any short comments they would like to make for the record. And, again, I would like to request, which you have already granted, the opportunity for either these or others to submit additional statements for the record.

I would like to specifically point out that Bob Lucas, who is Chairman of the North Carolina Marine Fisheries Commission, is present. And, Bob, I have already asked you if you wanted to say anything, and you said no. But if you would like to say something, you may; or if there is anyone else present, with your permission, if we could take about ten minutes for that it might be appropriate.

Mr. MANTON. I think that is a good idea, Mr. Lancaster. I suggest that individuals wishing to speak come up to the dias, and we will move the mike over. We will limit speakers to one minute. If you would please just line up. When it's your turn to speak, please give your name, your affiliation, and then take a minute to express

your views. Please come up. Just state your name and affiliation, for the record.

STATEMENT OF MILDRED GILGO, SECRETARY, FISHERIES AUXILIARY

Ms. GILGO. My name is Mildred Gilgo. I am the wife of a commercial fisherman and Secretary of Fisheries Auxiliary, and I have a statement that I would like to present. I cannot do it in a minute, but I would like to give it to you in writing, please.

Mr. MANTON. Well, we would be happy to accept your written statement for the record, and if you just want to take a minute or part of a minute and summarize it, we would appreciate hearing from you.

Ms. GILGO. The only thing I would summarize before this Congressional hearing is when the Magnuson Act was enacted in the early 1970's it was done to protect commercial fishermen. There were foreign trawlers fishing off our shores, and they saved nothing. They had processing plants on their boats.

My father was a fishermen. And, another thing, they would be recognized by the congresses that fishermen has lost their integrity.

During the war some of these fishermen actually served as—under Secret Service under the Secretary of Navy as confidential observers. Some of the ships that were lost off the coast of North Carolina and other coasts were probably the direct results of a direct commercial fisherman's chance to serve his country. And I have with me only one copy of a confidential observer report signed by the Secretary of the Navy for the second World War.

Another thing that has degraded fishermen over the history since the second World War is the fact that the Federal Government did recognize the fishermen in the sense that he was also recognized under maritime law. This was completely abolished, and left many fishermen with no insurance, no way to—no health insurance. They were not considered when this law was abolished and they were not grandfathered in. They just—some of them actually had to go on welfare in order to die, because they had no representation after they had given their lives in service to this country.

Another issues are—my concern is pollution is your biggest problem for fishing. I think everybody is aware of that. But it is easier to hide it than to address it.

I do not think fishermen have any animosity toward the recreational fishermen on a one-to-one level. I think this is a political effort, and it is not an effort of people—it is not people-oriented, it is politically oriented. Thank you.

[The statement of Ms. Gilgo may be found at end of hearing.]

Mr. MANTON. Thank you very much. Staff informs me we need not only your name, but also your address, just in case we have to correspond with you regarding the hearing.

Well, the mike is open if there are any other folks that have a one-minute statement they would like to make. If not, we will get ready to close the hearing.

Just state your name and your address, please, for the record.

STATEMENT OF KAYE RAMSEY, WIFE OF COMMERCIAL
FISHERMAN

Ms. RAMSEY. I am Kaye Ramsey, sir, and my address is 401 Seymour Drive. My husband is a commercial fishermen. What we want—I wanted to say is that we—when decisions are made we want data used fairly. It is important to us that that happens. One of the regulations that are coming down on us in January, the studies will not be done until 1995, you know, and this is ridiculous. And that is all I have to say. I am a little nervous.

Mr. MANTON. Do not be nervous.

Mr. LANCASTER. We will not bite.

Mr. MANTON. Well, if no other folks want to make a statement, we want to thank everybody that came here, some from long distances to testify. And we want to thank local folks for providing us with this beautiful courthouse for our hearing today. And we appreciate everybody's help in making this hearing come off.

Thank you all very much. We will adjourn.

[Whereupon, at 11:55 a.m., the subcommittee was adjourned; and the following was submitted for the record:]

Statement of William T. Hogarth, Ph.D, Director of the North Carolina Division of Marine Fisheries, North Carolina Department of Environment, Health and Natural Resources, before the House Merchant Marine and Fisheries Subcommittee on Fisheries Management concerning H.R. 780, legislation to authorize funding for the Magnuson Fishery Conservation and Management Act (Magnuson Act)

November 6, 1993

Superior Court Room
Carteret County Courthouse
Beaufort, North Carolina

Good morning and a sincere welcome to the magnificent outer banks of North Carolina, an unparalleled fishery environment for many fisheries and people who use and enjoy them. I am William T. Hogarth, Director of the Division of Marine Fisheries for North Carolina. First of all, we support the concept of the Magnuson Act and firmly believe that only through this type of state-federal management system will we be able to enhance and protect our valuable marine resources. Our prepared testimony expresses my views on how the Magnuson Act must be amended to better create this state-federal partnership necessary to restore, improve and provide long term management of this state's and nation's great fishery resources for all our citizens. Clearly, there is no doubt that North Carolina with its nationally unique and immense riverine, estuarine and coastal environment is now and will remain a major player in the management of this nation's fisheries. When appointed Director some 8 years ago I found myself in a maze of interagency confusion regarding who and how we were to manage this state's diverse fishery resources. Fortunately, co-located with my office has been a fishery coordinator from the U. S. Fish and Wildlife Service and a major National Marine Fisheries Laboratory is just next door both of which helped us

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create numerous productive partnerships that I am convinced have moved North Carolina to the forefront of fisheries management along the Atlantic Coast. But I know we haven't yet done all that we collectively need to do to improve these initial management programs. Changes are necessary in the Magnuson Act to carry us all into the next century of state/federal relationships to finally achieve successful management of this state and the nation's fisheries. I am convinced that we state directors must have a single national fishery perspective best achieved by combining the numerous agencies programs so that the federal government speaks with one voice. We will utterly fail to meet the challenges of the next century by segregating our fisheries and their management into arbitrary riverine, estuarine, coastal and marine components each with it's own different set of politics, funding mechanisms and ultimately different regulatory measures. We are confusing ourselves and doing little to benefit the fish. In addition, we'll never achieve significant improvements in our coastal ecosystem health and long term resource productivity without consolidation of the many voices coming from the federal level. Along with this consolidation, we must provide for decision making at the NMFS Regional Office level where the states and resource user groups will be more able to interact on major management issues.

Nationally, we must have enhanced data collection, management and analysis. We must build upon our existing programs at every level, consolidating and

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simplifying wherever possible and developing nationally uniform reporting processes at both the fishermen and dealer levels. To succeed we must have data programs that the resource users support and are willing to cooperate with if we ever hope to ensure compliance and improve the quality of the data we collect. In our participating democracy, those who are regulated and not allowed full representation have difficulty participating in whatever management scheme is developed. To move into the next century, North Carolina must be provided with full representation. Section 302 (a)(2) must be amended to provide North Carolina full voting membership on the Mid-Atlantic Fisheries Management Council (MAFMC) along with the South Atlantic Fishery Management Council (SAFMC). Precedent has been set for this with Florida having full membership on both the South Atlantic and Gulf Councils and to a lesser degree with Washington and Oregon having limited membership on both the Pacific and North Pacific Councils. Along with Snapper Grouper and Mackerel in the SAFMC, North Carolina has considerable interest in the fisheries managed by the Mid-Atlantic Council. We are the principal state in the summer flounder fishery with over 30% of the commercial landings occurring in the state and over 50% of the overall landings produced by North Carolina based boats.

Bluefish also managed under an MAFMC plan are extremely important to North Carolina fishermen, both commercial and recreational. North Carolina has the

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highest commercial landings of any state and recreationally, everyone has heard of Hatteras Blues.

Weakfish is up for consideration for a management plan by the MAFMC; North Carolina lands 70% by weight and is a major nursery area producing most of the weakfish along the coast. The SAFMC and MAFMC support North Carolina having full membership on both Councils.

To further the one federal voice initiative Section 302 (b) must also be amended to at a minimum include the Fish and Wildlife Service as a voting member of the Councils.

Section 304 needs amending to establish a procedure and timeframe for regulatory amendments. Fisheries management is so dynamic now that plans can no longer be set in place and left. Plans now need to contain framework measures which can provide fairly rapid change so adjustment can be made in plans. These rapid changes can be done through regulatory amendment. Presently, however, there is no time requirements on regulatory amendments. A mandatory schedule shorter than the full plan amendment time frame needs to be established for the regulatory amendment process to accomplish its intended purpose.

Section 301(b) requires the development of guidelines to assist councils in plan development. The intent of the 602 Guidelines was to assure that overfishing was defined and a program and time frame was developed to remove a fishery from

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overfished status. The intent is excellent, however, in practice, it has on occasion impeded the conservation process. A case in point was Amendment #1 to the Summer Flounder Plan. Amendment #1 had all necessary conservation measures to remove the fishery from overfished status except the quota management program. These measures, included mesh size, fish size limits and bag limits. Even though it was made clear in the amendment that quota management and recovery time frame were forthcoming, the amendment was rejected leaving the fishery an additional 18 months with limited conservation measures. Some change is required to assure that interpretation of the 602 guidelines is not to the detriment of conservation of the resource.

Section 304(d) limits fees to the administrative cost incurred in issuing the permit. Consideration should be given to providing the Councils with authority to establish user fees. The level of these fees should be closely related to the value of the resource that fishermen are using. However, if this is considered, these funds must go to a dedicated fund for management of the resource.

Amend 304 (f) (3) to return highly migratory species, especially sharks, to council jurisdiction. Management of highly migratory species should be consistent throughout U. S. jurisdiction and is best carried out under the council system process. The council management process provides for extensive

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and effective public input by all interested parties throughout the decision making process.

Fishermen feel they have very limited input into the present Secretarial plan development process. If management of highly migratory species were returned to the councils, it would be necessary to establish joint council management authority and voting procedures that would allow for a timely decision making process.

Section 306 of the Act needs to be amended to clarify the authority of the states to regulate fish harvested from the EEZ. I believe that the Act today allows the application of state law so long as it is not in conflict with the federal FMP. However, recent federal litigation, principally in Florida, has called this into question. This is a serious problem for states all over the country and must be addressed. This recent legal interpretation would most likely vacate at least two North Carolina rules; one prohibiting the use of purse seines to take food fish, and a second which establishes trip limits for mackerel.

Mr. Chairman, this concludes my prepared testimony. I would be pleased to respond to any questions you or other members of the Subcommittee may have.

Finally, I again welcome you to North Carolina and hope that your visit with us has been an enlightening and productive one.

BEFORE THE SUBCOMMITTEE ON FISHERIES MANAGEMENT
COMMITTEE ON MERCHANT MARINE AND FISHERIES

TESTIMONY OF RICHEN M. BRAME
ON BEHALF OF THE
ATLANTIC COAST CONSERVATION ASSOCIATION OF NORTH CAROLINA
ON THE MAGNUSON FISHERY CONSERVATION AND MANAGEMENT ACT

November 6, 1993

Submitted by:

Richen M. Brame, Executive Director
Atlantic Coast Conservation Association of North Carolina
P.O. Box 2623
Wilmington, N.C. 28402

Good afternoon. My name is Richen Brame and I am the Executive Director of the Atlantic Coast Conservation Association of North Carolina (ACCA-NC). I want to address today only two of the many issues that are now being raised to improve the management of national fisheries through the Magnuson Act. You are faced today with two compelling areas for amendment to the Act which, if done in conjunction, will restore confidence in the management system and allow that system to restore and rebuild our marine fisheries. The two areas I will address are: mandating conservation regulation and restoring credibility to the Council system.

First, I would like to tell you a little bit about the Atlantic Coast Conservation Association of North Carolina (ACCA-NC). The ACCA-NC began with a small group of sport fisherman 1988. The National Marine Fisheries Service imposed a 3 fish king mackerel limit and promptly then tried to close the season. These anglers realized that not only did they not know the regulations were coming, that even if they had they had no unified voice. They then joined the national Coastal Conservation Association. Since that time, we have grown to 10 chapters with almost 3,000 members. We foster education programs for youths and research programs designed to provide a greater understanding of the resource. ACCA-NC members actively participate in marine resource policy at the local, state, regional and national levels.

The ACCA-NC is composed of marine recreational fishermen who want to conserve the resource for the public, recreational and commercial interests alike. We are trying to promote a greater conservation ethic through the organization and institutions that manage our resources. The ACCA-NC is pro-resource, something that most users, commercial and recreational, support.

From our perspective, there must be a coordinated federal effort to manage the fishery. Essentially all fish occur in more than one state, most in several states. Without a cohesive management plan, the resource is almost invariably overfished and declines. Nowhere is this more true than North Carolina.

Fourteen of 22 fish species monitored by the N.C. Division of Marine Fisheries are classified as stressed or overfished. Four are classed as healthy; spanish and king mackerel are in that group only because of the action taken by the South Atlantic Fisheries Management Council in 1988. Summer flounder and striped bass, while still overfished, are making recoveries solely because of the threat of federal takeover of the species. In our opinion, without that threat, the N.C. Marine Fisheries Commission would have not acted and stocks would be in even worse shape.

The history of effective conservation rerulation by the N.C. Marine Fisheries Commission has been one of abject failure. It has been a Commission whose sole purpose was to provide access to the fishery for anyone using any gear they desire in any amount. While that may be slowly changing, the resource needs effective conservation measures now on a regional, if not national, basis.

North Carolina saltwater anglers spend almost \$300,000,000 annually in pursuit of everything from mullet to marlin. Almost 5,000 person-years of employment are generated by the industry. Almost 100,000 boats 18 feet or greater are registered in the state, with over 100 boat manufacturers sited here. Recreational saltwater fishing is big business in North Carolina, and it is entirely dependent on healthy fish stocks.

That's where the Magnuson Act must play a critical role. We feel there are two primary problems that must be addressed. The first is the need to put conservation of the fishery resource

first, not the needs of the exploiter. If the Act will mandate conservation first, then everyone wins. The second is restoring credibility to the Council system.

Mandating Conservation First

Clearly, the primary objectives of the Act, and the Council system it created, namely the conservation and management of marine fish stocks for long term sustainability, are not being uniformly achieved. To do so, the long term conservation needs of the resource must be placed before the short-term social and economic needs of the nation (recreational and commercial alike). The Act and the Council system must strengthen their emphasis on conservation. This can be done in the following manner:

1. We are concerned that the concept of "optimum yield" as applied by the Councils has allowed harvest above the level of maximum sustainable yield. The Act must be amended so that fishing mortality, or total allowable catch, can not exceed maximum sustainable yield. For already overfished or depressed stocks, the total allowable catch should reflect specified long-term target levels and recovery schedules. The Act should be amended to require that overfishing for each species in a fishery management plan be defined, by making the non-binding guidelines under Section 602.11(c) (50 CFR Part 602) have the force of law.
2. In the absence of scientific certainty, the Councils must adopt a prudent, risk-adverse approach to management. Conservation and management measures should minimize risk by providing a margin of safety to act as a buffer against overfishing.
3. Minimizing bycatch. The use of non-selective fishing gears, essentially any type of gear that catches significant amounts of non-targeted species, causes intolerable waste. It is a major problem in North Carolina waters, where in excess of 250 million fish each year are killed as bycatch or sold as scrap for pennies. Many of these fish are recreationally important species like croaker, spot, weakfish and mullet. Incredibly, there is still allowed the winter flynet fishery which targets small weakfish, largely in the exclusive economic zone. It has not been unusual to land 20,000 - 50,000 pounds of small weakfish a day per vessel in this fishery.

The Act is largely silent on the subject of bycatch and dead discards. The Act should include a clear definition of bycatch and make it a national policy to minimize the negative impact of bycatch on fish populations.

Restoring the Credibility of the Council System.

There are a lot of reasons for the perception in the Congress and the Administration that the Council system is broken. Groups interested in either preserving or using the resource are often at odds with the decisions made by Management Councils. Not surprisingly, those groups come to Congress or to the Administration to complain. The complaints tend to be along two common themes. The first is directed at the Council members. The aggrieved group is not represented on the Council and, for that reason alone, they did not get what they wanted. This line of reasoning seems to encompass the better balance requirements, better qualifications of Council members, and the need for conflict of interest requirements.

The other line is more structural. Councils do not have sufficient controls to eliminate the political and, therefore, arbitrary decisions. This raises the concerns for the need to apply the Federal Advisory Committee Act (FACA) to Council meetings, greater definition of key terms in the statute, such as overfishing, and stricter application of the 602 guidelines giving the Councils less discretion.

Most of these ideas have been around for a decade. Many of

them are already requirements in the statute or the "beefed up" 602 guidelines. So the thought occurs--why didn't it work? The reason is fairly clear. Most the legislative and administrative fixes have been superficial and unenforceable. What is the value of a definition of overfishing if neither NOAA or the courts recognize a statutory requirement to prevent it? What is the value of an annual report on the balance of the Council when it does not recognize pure environmental or consumer interests? What is the value of requiring the disclosure of the members financial interest if the statute gives the member carte blanche to vote the interest?

Why should anyone expect that the 602 guidelines would have a significant effect on the operation of a Council, when they are not even binding on the authors of them at NOAA? Who would anticipate that the application of FACA would somehow reduce the Councils to advisory committees when the Executive Branch and the Congress have consistently deferred to the Councils as the policy making body in national marine fishery management? Lastly, how would you hold a Council accountable for a decision, when every court that looked at the issue has concluded that the Secretary not the Councils, is accountable for federal fishery management?

There obviously are small exemptions to most of the underlying concern for each of these questions. However, the reason for these concerns is clear--the statute as presently configured gives the Councils all of the rope they need to hang themselves publicly, and sooner or later they do. The end effect is that users of the resource and the public at large loss confidence in the management system.

The ACCA-NC proposes a simple set of solutions to restore confidence in the system. (1) The statute should be amended to provide clear delineated responsibility for the decisions made. Frontloading the regulatory system as suggested above will make the Council a clear part of the regulatory system. It will make the Councils accountable for their actions. (2) Eliminate the conflicts problem. The appointment criteria should include a requirement that if a nominee for appointment to a Council receives any compensation from any interest directly regulated by a Council other than their own business, they cannot be appointed. Secondly, any member of a Council who has a financial interest in a regulated fishery must recuse himself from the vote on the regulation. They may discuss it and they can continue to participate in the planning process, so long as they have fulfilled the present disclosure of financial officials today, ex Council members should have a five year post membership ban on appearing before either the Council or the Department of Commerce. (3) Require the 602 guidelines to be mandatory on the Secretary of Commerce and the Councils. (4) Stop worrying about the balance issue. Neither the Congress or the Administration will ever be able to properly characterize every Council member into a recreational or commercial box. The requirements for membership should continue to be knowledge of the fish and fisheries management and a clear statement of conservation ethic.

Conclusion

The Magnuson Act is the great federal experiment in participatory democracy. It is a system that works better than any before it or any that has been devised since, but it is not without its problems. This Congress has a chance to reform this system, change the public's perception of it and improve the public's confidence in it. It is time for strong measures before the system fails.

Thank you for allowing us to testify here today.



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Testimony of

SOUTHEASTERN NORTH CAROLINA WATERMAN'S ASSOCIATION

Melvin M. Shepard, Jr., President

on reauthorization of the

Magnuson Fishery Conservation and Management Act

BEFORE THE

SUBCOMMITTEE ON FISHERIES MANAGEMENT
MERCHANT MARINE AND FISHERIES COMMITTEE
U.S. HOUSE OF REPRESENTATIVES

November 6, 1993

Beaufort, N.C.

Chairman Manton and other members of the Subcommittee, thank you for this opportunity to provide written and verbal testimony on our views concerning reauthorization of the Magnuson Fishery Conservation and Management Act (Act).

Attached to today's testimony are copies of our response to the Library of Congress on October 1992, A letter to all Members of Congress in January 1993, comments to the National Academy of Science, Ocean Studies Board at Solomons, Md. on July 14, 1992, and finally a letter from the office of the late Congressman Walter Jones.

Primarily, we have been unable to find a window in the administration of the Act, through which we can seek redress of a wrong or to address decisions or rules made under the Act. Our only recourse has been through Congress and the Congressional offices echo the same frustrations in dealing with the administrators of the Act. Congress needs to retain oversight of the Act. The administrators of the Act violate the intent of the National Standards and are deleterious and/or give lip service to the intent of Congress in Fishery Habitat Concerns and Fisheries Research.

A major failure in the Act is that no base of operation was mandated by Congress and the administrators of the Act failed to establish a base. Few states have fish catch data that is dependable or is in a form comparable to other states. States

do not necessarily agree with Fishery Management Plans and may not enforce provisions of the Plan(s). Federal collection of catch data, outside state waters, may or may not result in counting the same catch twice. The Federal Government will spend millions of dollars on data collection, rule making and enforcement efforts, to no avail unless the states and the Act become partners in managing the Nation's fisheries. There needs to be a MANDATORY, uniform reporting system for all states. All enforcement of management efforts needs to be at the landing point in each state. Certainly, the states need an incentive and need to be a part of the decision process in forming reporting systems. They need to endorse Plans that they are asked to enforce.

Research, basic to the formulation of Management Plans is lacking. Each of the Councils expressed to you, their frustrations in using inadequate, aged, or non-existent research. We need to know more. Every Management Plan affects incomes and oftentimes directly causes an impact on another fishery.

Use of the DISCRETIONARY PROVISIONS of the Act in limiting access to fisheries, has been completely outside the intent of Congress in creating the Act. This provision in the form of such things as ITQs (Individual Transferrable Quotas) has brutally affected U.S. fishermen in direct violation of provisions Congressionally mandated as NATIONAL STANDARDS of the Act. These "limiting access efforts have created "price fixing". Allowed wealthy

individuals/businesses inside and outside fishing, to own a controlling interest or large shares of a fishery under a quota system, while true fishermen are eliminated from the fishery. In some cases foreign interests have owned all or large amounts of U.S. fisheries. Larger quota owners have been documented, conspiring with processors to set prices, regulate sales and squeeze small fishermen, with small quotas, out of a fishery. The stories of lost boats and homes, to foreclosure, and lost life savings are numerous, due to administration of this section of the Act. The surf clam quota administration caused hundreds of New Jersey fishermen to resettle into North Carolina fisheries. Act Economist take pride in the fact that they created Quotas that become valued in the thousands of dollars but these high values eliminate the average fisherman. Administration of this section of the Act has created "tenant" fishermen, much like the old "tenant" farmers. It has created the "rich get richer and the poor get poorer" situation. If Congress were to hold hearings on this section of the act, you would find many illegal actions, many abused average citizens and happy wealthy interests. Anything seems to be permitted under the umbrella of the Act.

We believe that the Magnuson Act, as Congress intended, was to be an excellent fishery management tool. The stated, NATIONAL STANDARDS of the Act are very clear. We believe that Congress intended equitable treatment of U.S. citizens. We believe that fishery management is absolutely essential. We believe that enforcement of proper management plans, is absolutely necessary.

We know that administration of the Act has been and still is, terrible. The importance of PEOPLE is being ignored. We know that states and federal interest are at odds and cooperation, in both cases, is poor. We know that Congress and this Committee have serious directions to the Act before it is re-authorized. We wish you well...You are the PEOPLES champion.

A handwritten signature in dark ink, appearing to read "MMA Sherrill". The signature is fluid and cursive, with the first letters of the first and last names being capitalized and prominent.



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October 27, 1992

Congressional Research Service
The Library of Congress
Attn: Mr. Eugene Buck
Washington, D.C. 20540

Dear Mr. Buck,

Thank you for your letter seeking comments on the Magnuson Fishery Conservation and Management Act (MFCMA). I have commented on each of the 5 questions:

Please note that statements in this paper are made with the understanding that proof may be requested. Proof is at hand and ready to be provided.

The MFCMA was intended to be a fair workable, intelligent vehicle to manage U.S. fisheries. The authors could not have visualized the unwieldy bureaucratic morass it has become. The power was seated with the U.S. Secretary of Commerce. This appears workable but in actual practice is a deeply complicated, structured struggle. Decisions do not deal with real problems nor clear conservation measures. A MAJOR OVERSIGHT IN MFCMA IS THAT VIRTUALLY ALL SEAFOOD PRODUCTS HARVESTED IN U.S. WATERS ARE LANDED IN STATE PORTS AND INITIALLY AND MOST EXTENSIVELY AFFECT STATE INCOMES, BUSINESSES, TOURISM, TAXES BEFORE ULTIMATELY AFFECTING U.S. TAXES AND EXPORTS. Federal and state legislators, governors, and other state officials should have initially demanded a shift of power more near the site of needed conservation measures, with oversight, perhaps, residing with the U.S. Department of Commerce and/or the House Merchant Marine & Fisheries Committee. The present administration of MFCMA seeks to control people and the authority of states as a solution to managing fisheries.

The MFCMA is becoming a sponge for federal funds as National Marine Fisheries Service (NMFS)/NOAA/Commerce spells out a need for FEDERAL enforcement, FEDERAL catch data systems, FEDERAL research, FEDERAL experts of all kinds, FEDERAL observers, and GIANT FEDERAL STAFFS to handle paper to and from the above.

The morass of bureaucracy is planned. If emergency action to correct a wrong under a management is approved by all Council members the NMFS/NOAA/Commerce representative must vote nay so that the Secretary of Commerce is not mandated to correct the wrong.

Question #1.

A...MFCMA Sec.2 Finding, Purpose and Policy (16 USC 1801) and Sec. 301 National Standards (16 USC 1851) are legally followed but the intent of MFCMA is patently not observed. MFCMA states a need for use of "the best available information". "The Best" being used currently in Management Plans may be 2,3,5,10 and even 20



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years old. Current scientific experts are not approachable. They maintain a smug, "we have information beyond your understanding or experience". The Federal Register and federal publications contain statements that are blatantly untrue, that lift research statements out of context to change meanings and/or use half-truths

B...MFCMA intended to([4] 98-623) recognize differences in areas and to involve knowledgeable fishermen As structured and amended MFCMA does not do this. The chairman of the South Atlantic Council on October 28, 1992, when asked why he had not been present at a public hearing, said, " I've heard it all before...you don't like it."

C...The present administration of the MFCMA has publically announced the intent to eliminate fishermen by the thousands. Reference Dr. William Fox before the N.C. Marine Fisheries Commission and Scientist Michael Sissenwine before the National Academy of Science. Never has concern been evidenced for the subsequent livelihood of these displaced individuals.

D...There is no reasonable avenue of appeal for fishermen when a wrong decision has been made. Appeals involve much personal money expended and a great deal of Congressional involvement.

E...The present administration of MFCMA has created a strong adversarial relationship between the U.S. Government on one hand and states/fishermen on the other. Fishermen view the U.S. Government as an enemy. On July 15, 1992 before the Ocean Studies Board of the National Research Council at Soloms, Md., Eugene Fritz representing NOAA/Seagrant said, " In my opinion, fishermen are deadbeats..."

F...MFCMA grossly fails to involve the U.S. consumer.

G...MFCMA grossly fails to deal with or react to seafood imports and their impact/effect on management of resources.

H...The U.S. Fisherman as a human resource and a human being is relegated to minor consideration. It is often publicated by MFCMA administrators that, " I'm for the resource". The stated intent of MFCMA clearly did not intend for humans,resources and the economy to be pitted against each other.

I...Congress is asked to fund the administration of MFCMA in steeply increasing amounts. The dollars necessary to continue the present form of FEDERAL expansion under MFCMA will continue to escalate. At present research dollars are sacrificed to enforcement. The enforcement budget will become gigantic. States presently refuse to enforce regulations made under MFCMA. Present enforcement is based on forcing compliance of states and fishermen. Enforcement is punishment rather than correction and brutal rather than constructive. Planned programs are redundant to state programs and self-serving to the administration of MFCMA rather than creating and improving.



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WHAT HAS HAPPENED:

1...The Federal Managers have firmly established that they do not know how to manage fishery resources and /or fishermen.

2... The Federal Managers have not established a foundation or base upon which to develop, "the fisheries can be conserved and maintained so as to provide optimum yields on a continuing basis"(MFMA). They have jumped to an ultimate step which uses scientific, scholarly theorist who deal in expensive postulations. The management plans/proposals are filled with such as: "potential" "indications" "anticipated" "increased probability" "average" "approximately" "widely recognized" "theoretical studies" "evolutionary approach" "concept" "reasonable probability" "Institutional inertial resistance to change" "Believed to be"

3...The Federal Managers lack of know-how has espoused a decision to eliminate COMMERCIAL fishermen (PEOPLE who live and breathe...pay taxes..raise families) until the number to be controlled reaches a level equal to the Federal Managers' abilities to manage.

4...The Federal Managers planned (and are planning) management efforts that eliminate the small commercial fisherman, resulting in creation of a few wealthy large fishing enterprises (that may or may not have ever been fishermen or even U.S. citizens/interests). The Federal Managers have created price fixing, anti-trust conditions and intentionally set up situations to give one fisherman advantage over another. The Federal Managers willfully and knowingly cause and observe, as success, commercial fishermen losing, their incomes, their investments, their homes and their life savings.

5...The Federal Managers have damaged fishery resources by their crude, uncaring manipulation of fishermen. (PEOPLE who want to work)

6...The Federal Managers use wording from the Act such as, "Best Scientific information available" to justify use of information that is the best available only because no effort has been made to obtain better information. Management plans use references 40 years old. A November 1991 Draft Shrimp Management Plan used statistics of the number of commercial fishermen employing shrimp trawls used 1978 data. The Federal Managers routinely print, as fact, (Federal Register and other) information that ranges from "out of context" to blatantly untrue, in order to justify decisions.



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present administrators as a WALL OF FEDERAL AUTHORITY. State Jurisdiction (97-453, 98-623) grossly fails to involve state efforts although virtually all seafood is landed in a state port as a vital part of it's economy.

Question #4

An example of enforcement now is that the U.S. Coast (who has curtailed it's age-old assistance to people because of budget) is used AT SEA to interfere with fishing efforts to go through a fisherman's catch, measuring fish, checking species, and enforcing the various Management Plans. Virtually all fish must be landed and sold in state ports where inspection of catch and data collection would be easy and not sacrifice work time at-sea.

Present report systems used under MFCMA are mind boggling in detail and time consuming for fishermen. Failure to file these reports has fines from NMFS/NOAA from \$1000.00 to \$5000.00. This same data is needed by the states, is easily collected dock-side by states and readily available to MFCMA. Stop this process now by going back to square one and involving local and state entities/personnel already or partially funded. Influence correction of inefficient or insufficient state programs. Cause fishermen to face problems in the area the problem exist and concur in correction. Move the POWER BASE out to responsible states. Make fisheries also a, "government of the people" instead of the present perception of FEDERAL ENEMY.

Question #5

The MFCMA needs to be seriously restructured to the extent that a completely new MFCMA emerges. The 50 plus year old Atlantic States Marine Fisheries Commission should have originally been absorbed as a part of, or superceded by MFCMA.

Discretionary Provisions (97-453, 99-659, 101-627) MFCMA brutally uses forms of Limited Entry such as ITQ's to cause fishermen to lose their homes, vessels and life savings. MFCMA knowingly creates anti-trust situations and price fixing, causes wealthy individuals/businesses to have an advantage over less fortunate, causes monied individuals/ foreign individual/foreign countries to replace established long time heritage fishermen. Limited access is directed specifically at commercial fishermen and directly impacts the economy. Limited Access as used by the administrators of MFCMA violates 16 USC 1853 and the entire stated purpose of MFCMA.

SUMMARY.....

The very administration/administrators of MFCMA that was expected to solve fishery problems has themselves/itself become a major problem. Senators and Congressmen must continually referee and plead constituent cases. There are fishery problems and there are solutions. There are different causes for the same problem in different areas. There are problems in some areas of the country that do not exist in other areas, even with the same specie. The solutions must involve the fishermen in the affected



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area and the state MUST be involved. Present administrators of MFCMA are not capable of dealing with people. Our country is nothing if not people. MFCMA administrators have therefore made a public decision to reduce the number of fishermen (people) to a level matching the administrative abilities.

The base for MFCMA was never established. Many states do not have in place the necessary fishery control and data collection mechanisms. These must be in place. Every fish caught must be recorded. Funds to supplement state efforts could be used to establish cooperative needs. People like Peter Jensen of Maryland could show how to work successfully with fishermen.

Continued reauthorization of MFCMA escalates in cost to the taxpayer

TITLE IV -- MISCELLANEOUS PROVISIONS

16 U.S.C. 1852

95-354, 97-61, 97-453, 99-659, 101-627

SEC. 406. AUTHORIZATION OF APPROPRIATIONS.--There are authorized to be appropriated to the Secretary, for purposes of carrying out the provisions of this Act, not to exceed the following sums:

- (1) \$5,000,000 for the fiscal year ending June 30, 1976.
- (2) \$5,000,000 for the transitional fiscal quarter ending September 30, 1976.
- (3) \$25,000,000 for the fiscal year ending September 30, 1977.
- (4) \$30,000,000 for the fiscal year ending September 30, 1978.
- (5) \$30,000,000 for the fiscal year ending September 30, 1979.
- (6) \$33,000,000 for the fiscal year ending September 30, 1980.
- (7) \$40,000,000 for the fiscal year ending September 30, 1981.
- (8) \$47,000,000 for the fiscal year ending September 30, 1982.
- (9) \$59,000,000 for the fiscal year ending September 30, 1983.
- (10) \$64,000,000 for the fiscal year ending September 30, 1984.
- (11) \$69,000,000 for the fiscal year ending September 30, 1985.
- (12) \$69,000,000 for the fiscal year ending September 30, 1986.
- (13) \$70,800,000 for the fiscal year ending September 30, 1987.
- (14) \$72,900,000 for the fiscal year ending September 30, 1988.



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(15) \$75,000,000 for the fiscal year ending September 30, 1989.

(16) \$77,200,000 for the fiscal year ending September 30, 1990.

(17) \$94,000,000 for the fiscal year ending September 30, 1991, of which \$6,500,000 shall be used for enforcement and \$5,000,000 shall be used to increase research and assessment efforts.

(18) \$98,000,000 for the fiscal year ending September 30, 1992.

(19) \$102,000,000 for the fiscal year ending September 30, 1993.

and these figures do not reflect the true expenses created by involvement with satellite elements such as:

- U.S. Coast Guard
- U.S. Wildlife Federation
- Office of Management and Budget
- U.S. Dept. of Commerce
- NOAA
- General Services Administration
- and many others

This expense will continue to rise until it approaches the actual income from U.S. Fisheries. Research money is now going to enforcement. After 19 fiscal endowments by Congress the MFCMA has only a FEDERAL plodding giant that does not seem to like people and people surely do not like nor understand him. MFCMA administrators can easily sit before Congress and show a need for more money for:

ENFORCEMENT...uncooperative states and fishermen.

RESEARCH.....Beyond a doubt in everyones mind this is vitally needed. All the 19 allocations listed above would not be enough to catch us up on what we need to know to manage fishery resources. Some priorities need to be identified and the funds locked into specific research.

DATA COLLECTION...Needed badly. A uniform system country wide needed. The FEDERAL GOVERNMENT SHOULD NEVER COLLECT DATA independently of states. If the federal government needs data from an area that affect the economy of a state then the state also needs the data.

PERSONNEL.....Federal employees and temporary employees under MFCMA will soon, if not now, resemble a small government.

TRAVEL, LODGING...Needed badly as long as MFCMA like Ringling Bros. has to take the whole circus around the country because there are no trained acts at the destinations, only spectators.

RECOMMENDATIONS:

MFCMA policies/programs need to be locked in place and a moritorium placed on further activity by MFCMA. An intensive investigation/hearing/forum



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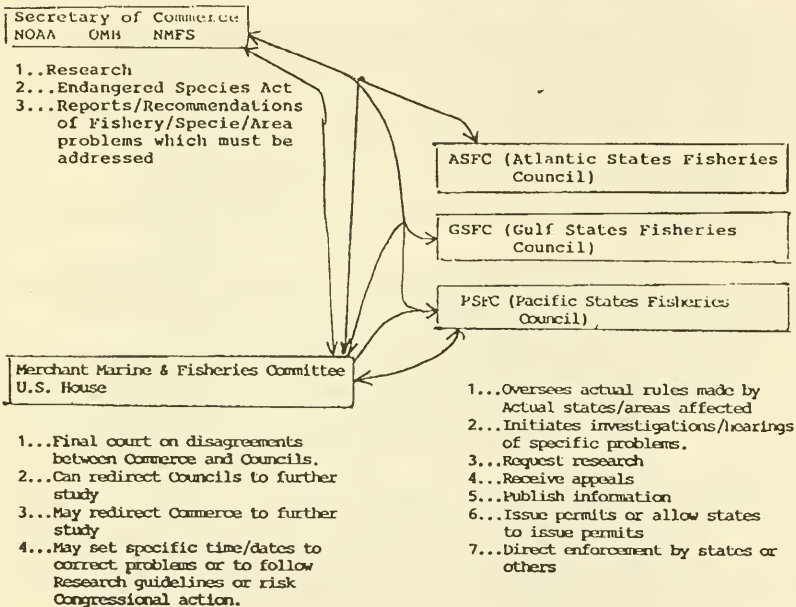
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by the U.S. Secretary of ^{Commerce} ~~Congress~~ jointly with the Merchant Marine & Fishery Committee of the House and the equivalent body of the Senate. Governors (and Fishery Aides) of every state should participate. The thrust must be that Fishery problems exist and must be managed for the common good and that states must be a part of the serious process. A cooperative system with strong communication ties must happen.

A possible structure:



Respectfully,

Melvin M. Shepard, Jr.
President



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January 6, 1993

Honorable Charlie Rose
2230 Rayburn House Office Bldg
Washington, D.C. 20515-3307

*This letter sent to
all members of
Congress*

Dear Congressman Rose,

The Magnuson Fishery Conservation and Management Act (MFCMA) will be before you in 1993.

Page (1), 16 USC 1801 sect.2 FINDINGS, PURPOSES AND POLICIES... sets forth the situations and the needs clearly...

I.E. (partial quote):

"(3) Commercial and recreational fishing constitutes a major source of employment and contributes significantly to the economy of the nation.

(5) Fishing resources are finite but renewable....."

THE FINDINGS ARE STILL TRUE AND THE NEEDS STILL EXIST.

Six (6) major errors were made at the outset in formulating the MFCMA.

1...Congress assumed that the Secretary of Commerce/NOAA/National Marine Fisheries Service/Regional Fishing Councils (The Federal Managers) would know how to manage fishery resources and fishermen.

2...The individual states were not involved. No area of the Act recognized need for a joint cooperative effort between federal and state interests (Federal/State Managers). Some will argue that the Regional Councils involve the states. NOT SO The Councils are made up of individuals who react to information/directives/reports from The Federal Managers, with their own personal feelings/agendas/experiences.

3...The volumes of knowledge stored in the minds of fishermen who have worked an area/species/type gear/etc. for 20-30-40-50 years was never mandated as a viable resource that must be a part of the process of discovery and solution from the very beginning. It has been forgotten that initially commercial fishermen asked for this Act. Some will argue that Regional Councils and Advisory Groups involve fishermen. NOT SO Advisory Groups are in name only. Fisherman input at the Regional Council level begins at "Scoping Sessions/Public Hearings" where he is cast in the role of adversary. He is not allowed sufficient time to present his thoughts nor does the Council even pretend to listen. He makes his statement and "goes away," there is no exchange of thoughts... no back and forth discussion...there is no quest to discover



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truth and solution...TRUTH AND SOLUTION are already pre-determined by The Federal Managers. Knowledgeable fisherman input does not exist in the preparation of Fishery Management Plans. The Federal Managers, in print, state, "Obstacles to fishery reserves include automatic resistance to new approaches in U.S. marine fisheries". They do not understand the principle that, "On the 18th of April in '75" our forefathers, "fired the shot heard round the world" as they cast out dictatorship without representation.

4...Congress did not retain a safety valve or fine tuning control to correct problems within the Act except for a time when the Act was up for reauthorization. When massive numbers of letters of appeal were written to the Secretary of Commerce, the letters were answered by the very people we were writing about. Never was a letter answered by or acknowledged by the Secretary of Commerce, the Vice-President or the President of the United States. Fishermen/States have/had no appeal except through Congress. In July 1992, at a meeting of the National Academy of Science, Ocean Studies Board in Solomons, Maryland, National Marine Fisheries representatives asked House and Senate representatives why Congress did not leave politics out of management of fisheries and allow NMFS to do their job.

5...Never was (nor has there been) there established a foundation or base upon which the Act could develop. To this date, most states do not have a fishery data information system. Neither do the Federal Managers. To my knowledge, there does not exist a uniform data system model. To my knowledge the states have never been asked to participate in forming such a model system and encouraged to implement it in their states. The fisheries data presently being used as a basis for management decisions may have an error margin of 100% Plus, in either direction.

6...Water Quality/Estuarine Quality/Fishery Nursery Quality degradation and the subsequent loss of juvenile fish stocks was not recognized and recovery efforts were not programmed nor mandated. To this date, estuarine quality is not quantified nor fish stock habitat nor numbers charted. As a result efforts and the need of effort under the Clean Water Act are few and not clearly recognized. Fishermen, environmentalists and concerned citizens would force corrective efforts.

After years and \$ 1,065,900,000.00 PLUS we have made virtually zero positive progress with the Magnuson Act and it's findings, Purposes and Policies.



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Page three January 6, 1993 Magnuson Act

WHAT HAS HAPPENED:

1...The Federal Managers have firmly established that they do not know how to manage fishery resources and /or fishermen.

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7...The Federal Managers routinely over-ride States Rights. Many of the fishery management plans contain comments referring to a need for state cooperation/participation, as an after-thought.

8...The Federal Managers have firmly established a perception that the U.S. Government is an enemy of the states and their commercial fishermen.

9...The Federal Managers must now depend on brutal enforcement to control uncooperative states and their fishermen. Enforcement will become a big budget item. Enforcement will often find state fisheries officials refusing to enforce federal fishery laws. Enforcement is the most major influence in management plans. "Ease of enforcement" over-rides concern for the impact on fishermen and frames the entire resource concern.

10...Federal Managers' research efforts are incomplete and knowingly less than adequate. The cooperative, inexpensive research input from states and their fishermen is spotty and narrowly sited rather than a community of interest, with long range goals and multi-site efforts.

11...Federal Managers now (after many years and \$1,065,900,000⁰⁰ plus dollars) plan a federal fisheries data collection system rather than obtain information from the states. This will be a major budget expense that will still leave the states gathering the exact same information. The uniform reporting system mentioned earlier needs to be in every state with easy access by federal interests. Federal money to assist in development of a states uniform fishery reporting system could easily be contingent on adoption of the system (AS CREATED IN CONJUNCTION WITH THE STATES)

12...The Federal Managers operate in a vacuum...out or reach of states and commercial fishermen (PEOPLE who feed families) who are the ultimate receptors of any management efforts. There is no appeal process. Congress assumed that it would be enough when the Act stated that,"the national fishery conservation and management program...involves and is responsive to the needs of, interested and affected states and citizens..... IT IS NOT ENOUGH

The states must share the blame for they have been complacent and have failed to inject their sovereign positions. The states should have stridently insisted on involvement and response as mandated under the Act.



Southeastern North Carolina Waterman's Association

Post Office Box 0015 • Sneads Ferry, NC 28460-0015

Phone (919) 327-1231

Fax (919) 327-3136

Page five January 6, 1993 Magnuson Act

13...The Federal Managers failed to aggressively address water quality/fish nursery degradation on seafood quality and quantity. Some rivers now carry health warnings about eating fish.

SUGGESTIONS:

The Federal Managers/Management of the Magnuson Fishery Conservation Act are so bad and headed on such a terrible path that Congress should suspend all efforts, as they now exist (handling appeals on their own merit) until the act can be restructured. The National Academy of Science (Ocean Studies Board) is presently studying the situation. The Congressional Research Branch of the Library of Congress is asking for comments on the Act. Professor Bonnie McKay (Rutgers University) has been doing research for some time.

I do not see how anyone in the present Secretary of Commerce/NOAA/National Marine Fisheries complex can remain. The mind-set is not tolerable. Dr. William Fox (in Southport, N.C.) and NMFS scientist Michael Sissenwine (in Solomons, Maryland) stated plans to eliminate many commercial fishermen as a solution to fishery problems. Eugene Fritz of Seagrant (in Solomons, Md.) stated, "In my opinion commercial fishermen are dead beats". People like Peter Jensen and Brian Rothschild of Maryland and Dr. Mike Orback of East Carolina University need to be cranked into the system.

Do we want to create unemployment or do we want, "sound management ...to provide optimum yields on a continuing basis" as stated in the Act. I believe that employment and proper yields are compatible. With the unemployment situation in the United States as it currently exists, I believe we are mandated to find a better way. PEOPLE are our most important asset.

I have tried to give you the gross impact of the Magnuson Act and especially the present administration of the Act, as it now exists. I will follow up with comments and documentation of my comments.

United States fishermen...PEOPLE...need your wisdom and informed concern with the reauthorization of the Magnuson Fishery Conservation and Management Act.

Respectfully,

Melvin
Melvin M. Shepard, Jr.
President



Southeastern North Carolina Waterman's Association

Post Office Box 0015 • Sneeds Ferry, NC 28460-0015

Phone (919) 327-1231

Fax (919) 327-3136

July 14, 1992

Comments to the National Academy of Science, Ocean Studies Board

We appreciate the opportunity to present our Association and fishermen.

Our Association believes in the right of everyone to enjoy fishery resources. We are involved in every aspect of resource management, from a fight for water quality to an all out effort to fish so that the resources last forever.

Our Association has provided documentation to the Ocean Studies Board for some time and contends that:

I...The National Marine Fisheries Service is a failure at management and a serious liability to the U.S. Fishing Communities for the following and other reasons:

- A...NMFS creates unemployment.
- B...Never addresses the plight of families it directly causes to fail at fishing.
- C...Creates price fixing and anti-trust conditions.
- D...Creates intense competition in already stressed fisheries.
- E...Sets quotas when it has no idea of the fishery condition.
- F...Causes fishermen to fish under dangerous conditions.
- G...Creates a massive waste of legal, marketable fish.
- H...Causes fishermen to fish in fisheries when non-profitable.
- I...Maintains a FEDERAL FORCE over individual states and their opinions, fostering uncooperative state attitudes.
- J...Makes rules based on personal likes and dislikes.
- K...Makes rules for ease of enforcement that have nothing to do with resources management.
- L...Created a process that may be historic in it's bureaucratic stance. Fishermen working within the system are met with great expense and usually requires Congressional assistance.
- M...Fishery management plan components are an insult to fish-experience and intelligence.
- N...Forced use of TEDs when NMFS personell documented TED failure.
- O...Allows the various Fishery Management Councils to operate in violation of the voting membership provisions in the Magnuson Act, 16 USC 1852
- P...Makes management rules by regions when an individual state must adjust for different type fisheries within it's borders.
- Q...Intensifies competition and adversity between recreational and commercial fishermen.
- R...Misleads the public/fishermen on issues for public hearing.
- S...We believe that the Readers Digest article, "WHY RUSSIA CAN'T FEED ITSELF" accurately describes NMFS efforts and the United States fisheries/fishermen condition under NMFS.



Southeastern North Carolina Waterman's Association

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Page 2 Ocean Studies Board July 14, 1992

T...NMFS is trying to carry Endangered Species Act enforcement rigidity over into managing fisheries

II...The Atlantic States Fishery Management Commission after many, many years is ineffective and like NMFS out of touch with the human who fishes. It's handling of and management proposals for, correction of the weakfish overfishing problem is a model for lack of understanding of practical fishery resource management. If passed, the Carper Bill on interjurisdictional fish, will be a disaster.

Across the Country, Fishermen perceive:

- 1...Dr. Fox as the root of all their problems and a national millstone hung around their necks.
- 2...That NMFS (inclusive) is not to be trusted.
- 3...That a power struggle within the NMFS/NOAA/Department of Commerce structure is a major problem.
- 4...That it is necessary in November to remove the Republican Party in order to obtain justice.
- 5...That fishing IMPORT money must be involved or there would not be such an intense effort to impede fishermen with rules that do not make sense and for no apparent reason cause reduced catch.
- 6...That NMFS is out of reach and there is no one to talk to.... ENFORCEMENT...ENFORCEMENT but I have never seen a plan to enlist support or understanding.
- 7...That the Secretary of Commerce/NOAA/NMFS uses parts of the Magnuson and the National Academy of Science 1990 report as they choose and ignore other parts.
- 8...NMFS continued existence will, "make the rich man richer and the poor man poorer".
- 9...That the Secretary of Commerce doesn't care.
- 10...That President Bush doesn't care.

WHAT NEEDS TO BE DONE:

Congress in the Magnuson Act found and declared that, "commercial and recreational fishing constitutes a major source of employment and contributes significantly to the economy of the Nation". It found a need for "sound management". It stated that, "The collection of reliable data is essential to the effective conservation, management and scientific understanding of the fishery resources of the United States.

The National Academy of Science needs to do a study of:

- 1...How can we protect the fishery resources and fishermen (of all kinds) without compromising either asset.
- 2...Who are the players? i.e. NMFS, States, Universities Marine Extension Services, fishermen, and etc.



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Page 3 Ocean Studies Board July 14, 1992

- 3...How do we accomplish management of the fishery resources:
 - A...Involves NMFS/NOAA research people and their recommendations.
 - B...Involves State Fishery officials, their staffs, their recommendations and their cooperation.
 - C...Involves active fishermen/suppliers/processor in solving problems and making policy.
 - D...Form an oversight organization that insures agreement and sanity, with direct ties to Congressional influence. From the beginning, give this oversight power to arbitrate. The power to temporarily suspend or institute measures IMMEDIATELY when a management error is made or a resource problem is detected.
 - E...Eliminate all fishery management efforts now in existence.
 - F...Establish an information network that informs every fisherman of problems, research, quotas, size limits, EDUCATION, and etc.
 - G...Spell out current and continued research needs and implement the research.
 - H...Quantify seafood IMPORTS and EXPORTS and make specific plans to improve the GNP.
 - I...Promote FRESH U.S. SEAFOOD and identify U.S. seafood sources and imported seafood sources on all supplies of seafood down to restaurant menus.

Personally, I am at a loss to pick the "good guys" from the "bad guys" if such a distinction can be made. My questions are (1) What is the real truth and (2) does anyone in control really care about the truth.

Respectfully,

Melvin M. Shepard, Jr.
President

WALTER B. JONES
1ST DISTRICT, NORTH CAROLINA
TELEPHONE CODE 202-226-3101

FLOYD J. LUPTON
ADMINISTRATIVE ASSISTANT

COMMITTEES
AGRICULTURE
MERCHANT MARINE
AND FISHERIES

Congress of the United States
House of Representatives
Washington, DC 20515
May 24, 1991

Mr. Melvin M. Shepard, Jr.
President
Southeastern North Carolina
Waterman's Association
P.O. Box 0015
Sneads Ferry, North Carolina 28460-0015

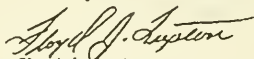
Dear Melvin:

This will acknowledge receipt of your telephone call to this office on Wednesday, May 22, and also your faxed letter along with other documentation received on Thursday, May 23. Your concerns relate to dropping the proposed ban on fish traps and snapper/grouper fisheries as proposed by the National Marine Fisheries Service to the Secretary of the U.S. Department of Commerce.

As I indicated to you in our telephone conversation, these are matters which are dealt with by the Merchant Marine and Fisheries Committee and immediately upon receipt of your letter, it was sent directly to Mr. Ed Welch, Chief Counsel, Merchant Marine and Fisheries Committee, with a request that he take those immediate steps designed to intervene in this proposal in the hope of affording you and other commercial fishermen some relief. Quite frankly, the South Atlantic Fishing Council has created far more problems than they have solved. It is my sincere hope that action by the MM&F Committee can and will make a difference for as you well know, North Carolina falls within the jurisdiction of the South Atlantic Fishing Council and we will be plagued with the same restrictions which are confronting you at this time. May I assure you that you have a sympathetic ear in the person of Chairman Walter Jones and that every effort will be made to assist you.

With warm personal regards and best wishes, I am,

Sincerely,


Floyd J. Lupton
Administrative Assistant

FJL:nh

Dr. Barbara Garrity-Blake, Vice President
 North Carolina Fisheries Association,
 Carteret County Auxiliary
 P.O. Box 91
 Gloucester, NC 28528

November 3, 1993

The Honorable Thomas J. Morton, Chairman
 Subcommittee on Fisheries Management
 U.S. House of Representatives
 Committee on Merchant Marine and Fisheries
 Room H2-534 Ford Office Building
 Washington, DC 20515-6230

Dear Congressman Morton,

I thank you for the opportunity to testify on behalf of the NCFA Carteret County Auxiliary. The short notice and preparation time we participants received for this hearing is unfortunate; I nonetheless hope that my comments can be of some use.

The FCMA is comprised of two related parts: fisheries conservation and fisheries management. The goal of the act is to strike a balance between maintaining the maximum sustainable yield of fish stocks (conservation), while realizing the full potential of U.S. fisheries resources (management). The purpose of this act is thus twofold: to conserve U.S. fishery stocks, and to promote domestic commercial and recreational fishing, taking into account the social and economic needs of the states. My primary criticism of the Magnuson Act is thus:

(1) The balance between biological concerns and socioeconomic concerns of U.S. fisheries has not been struck. More emphasis is put on the conservation of fish stocks, while socioeconomic considerations and sound socioeconomic data are sorely lacking. Furthermore, the Magnuson Act's goal of promoting the U.S. fishing industry has been of low priority. The consequences of this neglect are far-ranging: commercial fishing communities in this region and in virtually every other U.S. region are nearing a state of social and economic crisis.

The crises commercial fishermen face are often for reasons other than stock depletions: an overburden of regulations at the national, regional, and state levels (many of which have been contradictory, poorly researched, and costly), the increasing importation of seafood and fishery products (thus the "foreign" threat of 1976 persists in a new form), and the displacement of commercial fishing families and communities by politically-powerful investors and recreational interests. If policymakers took the socioeconomic portion of the Magnuson Act as seriously as they do the conservation portion, the present-day crisis would

not exist.

A primary political force behind the passing of the Magnuson Act in 1976 was to eliminate foreign fishing vessels that had been harvesting in U.S. waters. Now, almost twenty years later, the context in which fisheries management decisions occur is extremely complex, as is the context in which commercial fishermen work. It is increasingly perceived by the public that there still exists an enemy in U.S. waters, but ironically, today's enemy is the American commercial fishermen himself. Fishermen have been demonized by well-funded smear campaigns of recreationally-oriented interest groups that, under the guise of conservation, seek exclusive access to fisheries and coastal resources. For example, the "Ban the Net" crusade, which disseminates gross misinformation in an emotional appeal to the public, has managed to throw thousands of fishermen out of work in major states such as Texas and California. This movement is presently active in North Carolina. Hence my second point regarding the Magnuson Act:

(2) Federal (as well as state) fisheries policies are increasingly driven by ideology (public or interest group opinion) rather than scientific data. This is in violation of sec. 2 101-627 (3) of the Magnuson Act which states that management programs must be based on the "best scientific information available", must "promote efficiency", and must be responsive to the needs of "interested and affected States and citizens". Area-specific data, sometimes in biology and usually in the social sciences, fall victim to federal regulations. For example, the NMFS requirement of TEDs in all trawls, including North Carolina inside (sound/estuarine) waters, flew in the face of area-specific data, data in the "Decline of the Sea Turtles" report on which the call for TEDs is based, and state fisheries recommendations. Rather than considering the biological data and the potential socioeconomic impact of TEDs in these areas, NMFS imposed the regulation under the threat of a lawsuit from the Center for Marine Conservation.

Recommendations:

The main weakness in the Magnuson Act seems to be not in its writing but in its implementation. More aggressive measures are needed to assure that the present imbalance between fishery conservation and fisheries management (especially regarding socioeconomic concerns) is redressed. By emphasizing conservation in fisheries policies to the neglect of economic and social factors, U.S. waters are in danger of becoming sanctuaries for fish rather than places of work and recreation.

In considering the social climate of the late 20th century, very different from the days when foreign vessels were the easily targeted threat to the U.S. fishing industry, I further recommend that the Magnuson Act explicitly address the major factors undermining the industry today that are of national concern, including the importation of seafood and the marginalization and displacement of commercial fishermen by political forces that seek to appropriate coastal resources for their own interests.

Perhaps stronger wording is in order; for example, the Magnuson Act could "promote and protect domestic fishing." A provision for the protection of commercial fishing interests from ideological campaigns and resulting ideologically-based policy is in order: this would serve the integrity of the fishermen, the consumer, and sound scientific study.

Regarding fishery stock depletions: the Magnuson Act addresses only one factor contributing to stock declines, and that is overfishing. Other factors contribute significantly to this problem as well: overdevelopment of coastal areas, fresh water runoff, declining water quality, and so on. I recommend that the Magnuson Act explicitly call for the coordination of this Act with other legislation that works to promote clean water, protected wetlands, etc. Only by coordinating such efforts will fishery resources truly be protected.

I thank you for this opportunity to be heard.

Sincerely,

Barbara J. Garrity-Blake, Ph.D.

Barbara J. Garrity-Blake, Vice President
North Carolina Fisheries Association, Carteret County Auxiliary

Oscar Greene, Jr.

2707 Evans Street
Morehead City, North Carolina 28557

November 3, 1993

U.S. House of Representatives
Committee on Merchant Marine and Fisheries
Room H2-534, Ford Office Building
Washington, D.C. 20515 6230

Subj: Magnuson Act Comments

Dear Chairman Manton and Committee Members,

A brief introduction. I have only been associated with the commercial fishing industry since 1939. Prior to that, I owned a contracting firm that did \$30,000,000 per year and employed some 650 people. I sold the company in 1983 and left the company at the request of the new owners in 1986. Last year the company went out of business, but that did not impact the economy because there are as many industrial plants, shopping centers, etc being built as there would have been had my company stayed in business. The same is not true in the fishing industry. Here, people are being put out of business. A social and economic heritage is being destroyed unnecessarily in the misconceived pursuit of conservation. These people do not appear on the unemployed list. They are not subject to unemployment compensation or workmans compensation and most do not have health insurance.

I was on the N-C Board of Examiners of Electrical Contractors for some 25 years and chairman for 12 years. We had a good working relation with our constituents. When I got connected with the fishing industry I could not believe the adverserial relationship between the Councils, the NMFS and the fishing industry. I have worked to try to help in this regard but to no avail. My Congressmen and Senators have been most cooperative and tried to help but as far as I can discern, the NMFS answers letters in a way that means nothing, take no action and, as far as I am concerned, thumb their nose at Congress.

Rep. Jones in his address to the House of Representatives supporting H.R. 2081, Fishery Conservation Amendment of 1990 stated "Secretarial management of highly migratory species should involve a process that is essentially similar to the Council process with full public and industry participation". He also said "U.S. industry should not be subjected to management standards that are inequitable or unreasonable when compared to those that are required of fishermen from other fishing nations that are harvesting the same stock or stocks of highly migratory species----".

The Magnuson Act as constituted would not be bad if the Regional Councils and the National Marine Fisheries Service (NMFS) would abide by the intent and letter of the law. They certainly do not follow the intent as stated by Rep. Jones. Examples:

- . Highly migratory sharks are controlled to the point that, not only are U.S. fishermen discriminated against, but the industry and the fishermen are being ruined. U.S. fishermen are now going to the Bahamas and Mexico to fish on the same stock of sharks that we have and the product is being exported to the U.S. These captains are fishing on foreign flag vessels that are immune from U.S. regulations. Less than 10 years ago the NMFS urged fishermen to go into the shark fishery and even subsidized some fishermen. In 1989, in the first draft of the shark plan, they said sharks had been overfished for 10 years and must be controlled. Now they have destroyed the industry with unrealistic quotas in the name of conservation.

- . Size limits are put on snapper/gouper fishery and yet any size can be imported without any duty or restrictions. I do not advocate duty, I advocate fairness.

- . The fishing industry is not being consulted in the decision making process and no consideration is being given to the economic impact on the fishermen or the industry. In fact, in a meeting Dick Bruno (a shark

fisherman), Jim McCallum (a member of the committee staff) and I had with Richard H. Schaefer, Director of the Office of Fisheries Conservation and Management in the fall of 1991, Schaefer commented that we had to realize that the NMFS was interested in the resource and not in the fishermen or the fishing industry. This was in response to our concern over the flaws in the shark and other fish management plans and the adversarial relations between the NMFS and the fishing industry.

- The economic impact of the rules and regulations are not being considered. In fact, no one in the fishing industry, that we have been able to talk to, have ever been consulted as to how a fish management plan would impact the fishery.

- The councils are not represented by the industry in a fair and equitable number. The South Atlantic Council has only 3 that can be considered as representing the industry. It is difficult to understand how the Councils can make intelligent decisions when the industry is not adequately represented or consulted. Many council members know little or nothing about the fishing industry when appointed. They can be sincere and dedicated but the fishing industry is a diverse, fragmented, and complicated industry. Good intentions do not always result in good rules. Example, in order to regulate the fishing trapping for black bass, the rule was that nothing but black bass could be on the boat when trapping. This resulted in forbidding trap fishermen from doing dual fishing such as sink netting or snapper/grouper fishing. In addition they could not keep trap by-catch. As a result, many had to leave the fishery and either go to a new fishery at considerable expense or go out of business. The council later realized the mistake and about a year later changed the rules, but the damage had been done. There are numerous other examples where the councils and the NMFS have destroyed businesses and ruined lives. Fishermen are truly hard working entrepreneurs. They deserve better than they are

getting.

N.C. is on the South Atlantic Council. Cape Hatteras divides the north and south fisheries. N.C. should be represented on both the South Atlantic and the Mid Atlantic Councils.

The Endangered Species Act is being indiscriminately used against the fishing industry. Perhaps some wording in the reauthorization can address this problem. Jerry Schill can address this better than I can but certainly this is the prime opportunity.

In addition to slowly destroying the industry, the value of commercial fishing vessels has plummeted. You get only a fraction of the surveyed value (appraised value) if you can sell the boat at all. In other countries, when a fishery is impacted, the government buys the boats. That is the least that the government can do. Then the boats can be allotted to underdeveloped countries to develop their fishery. This week a fishing boat was sold for under \$35,000 to a sports fisherman. He was lucky to sell the boat even though 3 years ago the boat would have brought \$85,000.

Again, we are destroying an industry and lives. So much has been written and said about creating jobs, growing the economy, and here we are doing the reverse. Nothing creative is being done to help the fishing industry. I am attaching a letter that I wrote this week on this subject. I hope that this type of approach can help N.C. and other fisheries. Sunday a local fisherman left to go to Mexico to fish. Several others will leave when he gets settled. I know of three others that have been to Panama, Honduras, Nicaragua and other countries to see if they could continue the only trade they know, and one that they love. In the act there should be provisions

for the fishermen to have legal counsel to protect their basic rights.

You have a hard job. I just hope you will involve the industry in the final study and writing of the law.

Sincerely,

Oscar Greene Jr.

encl: Letter to Dr. Kasanda on Global Transpark and fishing industry

Oscar Greene, Jr.

2707 Evans Street
Morehead City, North Carolina 28557

October 29, 1993

Dr. John D. Kasarda
Kenan Institute - CB#3440
UNC Business School
Chapel Hill, NC 27599-3440

Dear Dr. Kasarda:

We met at the TransPark when Representative Lancaster brought Representative Oberster to Kinston for a briefing on the TransPark. At that time I mentioned to you my interest in exploring ways that the TransPark and the fishing industry could mutually benefit from this wonderful venture you have fathered.

As you probably know, the Governor has declared this "The Year of the Coast" and at the conclusion of his speech to the N.C. Marine Fisheries Commission at the Civic Center in Morehead, I asked him, as Governor and Chairman of the TransPark Authority, how he envisioned that the fishing industry and the TransPark could mutually benefit. His reply was that the fishing industry could jump start the TransPark.

The traditional fishing industry in N.C. is being devastated by pollution, the rules and regulations issued by the National Marine Fishing Service and the rules and regulations of the N.C. Marine Fisheries Commission. This has resulted in the loss of livelihood by hard working, independent entrepreneurs that have been a part of our oldest industry. We are slowly but surely losing a social and economic heritage. The hope is that by research and study, in consultation with the fishermen themselves, the industry can benefit by:

- o Investigating how present production can have value added by better processing. Improved processing will be necessary if the shelf life of fresh seafood and processing of frozen seafood is to benefit. Hopefully, improving quality will allow for increased income from reduced production.
- o Investigating how our under utilized resources can be commercially utilized to produce more income. For example, it is my understanding that shark does not freeze well and therefore used mostly for fresh product. As a result, when the market is flooded, the price drops from the usual 60 cents a pound to 20 cents, and at times, cannot be sold at all. Also, in some countries, salt shark is utilized. I am confident with proper research there are many seafood resources that can be developed that are not being utilized at all.

TO: Dr. Kasarda

Page 2 -

- o Aquaculture should have possibilities but a crash program is necessary to see how it can be developed. At present it is being done on the basis of availability of funds. You can appreciate what that means.
- o What else? I am sure every fisherman, every fish house and every processor can furnish ideas. They live it every day!

I am certainly no expert in the fishing industry. I only got involved some 5 years ago. Prior to that I had a mechanical and electrical contracting firm, Electricron, Inc. When I sold it, we employed some 650 people. Last year the company went out of business, but this did not hurt the economy of the State. There are just as many shopping centers, industrial buildings, etc., now as there would have been had Electricron stayed in business. The same is not true of the fishing industry. These jobs are being eliminated. The value of commercial fishing vessels has plummeted. In fact there is practically no market for commercial fishing vessels. The situation is disastrous.

As for the TransPark, I was a skeptic. The reasons I agreed to take on the job of heading the Kinston/Lenoir County drive for the \$3 million was that I became a convert when Republican Governor Martin was succeeded by Democratic Governor Hunt and there was not even a ripple on the water. The transition was flawless and the dedication was enormous. Also, I wanted to learn more about the TransPark and the people involved so that I could know more about how the fishing industry could benefit. Arm twisting by Felix was also effective.

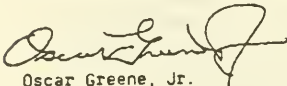
Now I have dual interests -- how can the TransPark benefit from the fishing industry and how can the fishing industry benefit from the TransPark? I was most encouraged when I asked this question of you and you exuded enthusiasm.

I envision involving Sea Grant, N.C. Seafood Marketing, N.C. Marine Fisheries, and N.C. Fisheries Association. I would like to pursue this. Can you direct me?

In view of the Governor's statement at the Fisheries Commission meeting, I am taking the liberty of sending him a copy of this letter, as well as others that might have an interest.

Awaiting your reply.

Sincerely,



Oscar Greene, Jr.

OG/cg

cc: Governor Hunt
Governor Martin
Seddon Goode Jr.
C. Felix Harvey
Nancy Stallings

Testimony Of
DAMON M TATEM, JR.

On Reauthorization Of The
Magnuson Fishery Conservation and Management Act

Before The
SUBCOMMITTEE ON FISHERIES MANAGEMENT
MERCHANT MARINE AND FISHERIES COMMITTEE
UNITED STATES HOUSE OF REPRESENTATIVES

November 6, 1993
Beaufort, North Carolina

Good Morning. My name is Damon Tatem. I am a tackle shop operator and recreational fisherman from Nags Head, North Carolina. Thank you, Chairman Manton and other members of the subcommittee, for holding this hearing today and allowing me to testify. I would like to address some of the concerns of many of the recreational fishermen and environmentalists in my area regarding the reorganization of the Magnuson Fishery Conservation and Management Act.

One of my main areas of interest over the past several years has been our local sound and ocean water quality, and the protection of primary and secondary areas which provide habitat and food for most of our coastal species during some stage of their lives. It has been my observation that complaints about degradation of water quality and consequent deterioration and eventual destruction of habitat made by the North Carolina Division of Marine Fisheries staff and the Marine Fisheries Commission have generally fallen on deaf ears when made to state and federal regulatory agencies. Only recently have there been signs of increased cooperation between the North Carolina Division of Environmental Management and our Division of Marine Fisheries.

Related to the coastal problems in North Carolina I see the need within the Magnuson Act for provisions to offer more protection for fisheries habitat. This is absolutely essential to the recovery of our fish stocks. As I understand it, the Magnuson Act authority extends only to making recommendations to governmental agencies. These recommendations are generally ignored. I believe that the councils should have some sort of formal authority to enforce the existing marine pollution statutes. Additionally, studies should be undertaken on the amounts and types of habitats necessary to sustain the viability of a species, gear impacts on bottom habitats, and suitable methods for protecting essential habitat areas. I feel that eventually it will become necessary to establish marine sanctuaries throughout the EEZ to protect habitats from the adverse effects of some current harvest practices and other types of exploitation.

Another area of my concern is the membership of the councils. It seems to me that it is very important to appoint individuals who will put the resource first and foremost, above the interest of their constituents. It is imperative that these appointees are totally dedicated to the protection and enhancement of marine fisheries resources. I do not feel this has always been the case.

I also believe that the councils should have additional members from the ecological and environmental communities who will have as their only concerns the resource. The appointment of these members should be based upon their scientific backgrounds. There seems to be a great amount of public sentiment that conflicts of interest exist on the regional councils, as on our own North Carolina Marine Fisheries Commission. These conflicts have greatly damaged the credibility of these councils and, consequently, reduced their support and effectiveness. Perhaps more rigid requirements for appointment, and clear guidelines for conduct should be instituted. Certainly, any council member who has a direct financial stake in a fisheries decision should excuse himself from the vote on the issue. Many council decisions in the past have been controversial and have attracted extreme criticism from all quarters. Perhaps some sort of final reviewing authority, composed solely of individuals with scientific backgrounds, should be formed to review and approve recommendations. An independent group of this type could guarantee sustainment of a fishery before any total allowable catch recommendations were implemented.

Another area of serious concern to me is data collection. Important decisions are being made based on old data, biased data, or, in some cases, no data at all. There needs to be

Tatcm---Page Three

a joint effort by the federal government and state fisheries departments to standardize data and avoid duplication of collection efforts. The data collection processes I see on the recreational level along coastal North Carolina relies largely on conjecture: a system of random dockside samplings and, in some cases, aerial surveys. The lack of a salt water licensing system in my state makes it impossible to determine the number of anglers actually utilizing the resource. Even more unsettling is the emergence over the past couple of years of recreational anglers withholding information from fisheries personnel. In my area, recreational tuna tagging efforts have almost ceased due to the fear that statistics will result in a closure or reduction of the yellowfin fishery by the National Marine Fisheries Service.

The Magnuson Fishery Conservation and Management Act has been successful in many ways. It is an essential management and regulatory tool, but it needs periodic adjustment and updating by the United States Congress to insure its continued vitality and direction. Without some necessary changes, public confidence will continue to erode and the support necessary to sustain the continued viability of the program will be lost.

Testimony of
Earl W. Barr
Consultant To
Wanchese Fish Co. Inc.
Before The Subcommittee On
Fisheries Management

Mr. Chairman and Members of the Subcommittee:

My name is Captain E. W. Barr. I am appearing as a Consultant to Wanchese Fish Co. Inc. of Wanchese, N.C. and as Chairman of the Board of Fish Marine Co. Inc. of Urbanna, Va. I am accompanied by Mr. Tim Daniels, Vice President of Operations For Wanchese Fish Co.

We appreciate this opportunity as active commercial fishermen, both domestically and internationally, to testify on the fishery management program established by the Magnuson Fishery Conservation and Management Act. We come as true commercial fishermen, not as lobbyists, or lawyers, or as elitist sportsmen. Simply as men of the sea and for the sea.

Wanchese Fish Company is owned and operated by the Daniels family, with eleven (11)

brothers active in the business. Since 1936, we have been a major supplier of fresh and frozen Atlantic fin fish and scallops and in recent months supplier from our own vessels of Alaska scallops. Wanchese fishes 123 fishing vessels, employing 477 crew members, plus 100 other shoreside personnel.

Fish Marine Corp is engaged in international joint fishing ventures with foreign private companies, governments and in the international marketing of fish, including that produced in U.S. waters.

Mr. Chairman, we applaud your statement that you intend to listen with an open mind to all interest parties and that commercial fishing interest shall have an equal opportunity to make its data, experience and ideas a meaningful part of the process.

Mr. Chariman we are not enemies of conservation and environmental interests. Our livelihood depends on an adequate resource. To over fish a resource is to cut our own throat. To allow our resource to be environmentally damaged is unthinkable to us as commercial fishermen. We are not the enemies of recreational fisherman, for we believe and encourage people not only to eat fish but to enjoy the sport

of recreational fishing. We are opposed to those elitist sports fishermen who try to limit the fishery to a privileged few. Mr. Chairman as a former Marine and many times since then, who has risked his life countless times to defend and support my country against all its sworn enemies, I deeply resent those who would regulate our industry and our citizens from full participation in our fisheries. Our fishery resource is owned by all the people of the United States, not just a privileged few.

Our testimony covers four subjects and issues.

1. Management Process.

The Acts requirements that councils be "fair and balanced" needs to be significantly altered in terms of its composition to insure that certain interest such as commercial fishermen, consumers and true conservationists area better represented. The statutes should provide that those who would be appointed to membership on the council, must demonstrate past experience and expertise in the area of council responsibilities for which they have been appointed, i.e. commercial fishing, conservation, etc.

No additional authority should be given to the National Marine Fishery Service leading to centralized decision-making. The problem is not one of more authority. The problem is one of too many people and agencies involved in the process. The problem is the length of time it takes to establish a management specie program and quotas. The problem is the lack of an accurate data base on which to rely on in setting quotas on a timely basis. We know, for example, that the Virginia/North Carolina data as regards fluke (summer flounder) is incorrect, as the Atlantic Council is belatedly admitting that the Connecticut's data is in error. It appears to us that the Mid-Atlantic Council jumped to a conclusion based on one bad year (the Class of 1989-90) without taking into consideration what has happened since then.

Since the 1989-90 year, landings have been steadily rising by about fifty (50) percent per year. The 5 1/2 inch mesh size, the 13 inch flounder rule in N.J., Va., and N.C. and the 14 inch rule further North, has steadily brought the stock back to the point where it is in good condition and where major increases in the quota can easily be accommodated.

1. NOAA estimates that U.S. Commercial Landing for 1992 of Summer Flounder will be about 20.2 million pounds (9.2 kmt.) If we add to this a reasonable allocation of 8.6 kmt for recreational fishermen the number grows to 17.8 kmt/ (39,240,000#'s)

2. If we compare this data to previous years, the statistics appear somewhat encouraging:

	Recreational	Commercial	Total
1990-6.6 kmt.	5,366,740	9,153,260	= 14,520,000
1991-9.8 kmt.	7,920,000	13,640,000	= 21,560,000
1992-17.8 kmt.	19,000,000	20,240,000	= 39,240,000

The increase from 1990 to 1991 was 48.5% in Summer Flounder Landings. The increase from 1991-1992 was 45%. The increase from 1990-1992 was 200.7%.

3. The average 1993 trip in Virginia appears to be up 50% over 1992. January to February 10, 1993 allowed only 20 fishing days because of weather conditions and in that time Virginia landed 1,200,000#'s of Summer Flounder. This represents 45% of the annual quota. This in the first 20 fishing days of the year. These statistics do not appear to support the contention that Summer Flounder fish stocks are overexploited.

4. Many boats have departed for Florida to begin the Calico Scallop Fishery. This further

reduced the fishing pressure on Summer Flounder.

5. It seems to me that we are unnecessarily constraining the fluke landings of the Eastern United States. The 5 1/2" mesh size for N.C. nets, The 13" minimum size fish, and the Virginia 3 mile limit seems to have increased the landings by over 200% without any other constraints.

A second major problem and wasteful rule regards by-catches. For example we had a boat fishing on dog fish, and in the harvesting process we caught 1500 pounds of fluke off the northeast coast. Under current rules we are allowed to take only 100 pounds for landing, thus having to dump 1400 pounds of good and economic valuable fish. This is not conservation. There is currently no orderly rule regarding the existing quotas and the landing of fish, i.e.. some states allow out of state boats to land and others do not, i.e. New Jersey will not allow Virginia or North Carolina boats to land if they do not have a previous history of landing in New Jersey. Virginia and North Carolina do allow New Jersey boats to land at any time, and so on.

The question is when will we established and orderly procedure that will allow fish to be landed at any fishing port, regardless of State, when the boats have quotas fishing permits and proper gear?

Gentlemen, we feel that our federal management plans have failed to establish an adequate and fair regime to protect our valuable fishery resource. We feel that the Fishery Management Councils are stifling the commercial fishing industry through complicated regulatory programs, using out dated and erroneous and untimely data. The present Council process for formulating FMP's is unnecessarily strict and time consuming. The process can be streamlined to allow Councils to act more quickly to alleviate over fishing, including recreational fishing, or conversely to expanding fishing activity when it is obvious that stocks in an over fished specie are fully recovered. We recommend that the Secretary of Commerce be empowered to over-rule any FMP that has been demonstrated it is based on erroneous data, conflict of interest by council members or which would cause serious economic harm to the commercial fishing industry. Since 1989 the seafood industry has lost over \$700 million in sales, nearly 1,300

seafood businesses failed and more than 22,000 jobs have been lost. We want you to know that even with these failed policies, the seafood industry is a major factor in our economy with annual fish catch in 1991 of 9.5 billion pounds, valued at more than 3 billion dollars and directly employing over 360,000 American. Balanced fishery policies and rational long term fisheries management will allow the industry to make a substantial contribution to getting our economy going again.

CONSERVATION - In managing our fish resources, the Councils often select an option that is overly disruptive of the industry while not justifiable from a conservation viewpoint. Councils should be required to identify the least restrictive plans and justify the adoption of a more stringent plan based on conservation.

When Councils adopt strigent plans that impact economically in a negative way on the commercial industry, or on recreational fishing, Council should be mandated to provide alternative species or fishing gear.

Should statutory prohibitions on harvest and retention of by-catch (i.e. undersized fish or non-target species) be enacted? The answer is a resounding no. Whenever you put a net over,

or a long line over, or a purse seine over, you will have some by-catch. That is the nature of fish. To require that fish with an economic value be thrown over board is silly and not logical. Net size, mesh size, and fishing methods cure most of any problem with non-target species or by-catch.

ENFORCEMENT - There are sufficient NMFS and Coast Guard resources available at this time to implement and enforce FMP's. Again the question is not do we have resources, but one of over supply of people. The problem is one of getting better results and a better return on capital investment.

NMFS should be required to regionalize its enforcement branch, rather than having all enforcement policies and decisions made by NMFS headquarters. Better harmony and co-operation between the commercial sector and the service would occur, thus bring about better solutions to problem areas.

PROPERTY RIGHTS and FEES - The question has been raised "should FMP's be adopted that grant harvesting rights to specific individuals while excluding other users." The answer to that question is an unqualified NO. The Constitution of the United States gives us

the inalienable right to be fishermen if we so desire. The fishery resource is the property of the U.S. Government and that ownership is vested in all citizens of America. To do otherwise in our option would be un-constitutional and constitute an affront to those that believe in freedom, justice and the right to make a living by working.

Should FMP's and amendments be rejected if federal agencies contend they are unenforceable? The answer is probably yes, however we want a closer look at this question and its implications.

Should fees be charged for access to resources? Again the answer is NO. Imposition of any additional fees or costs to the commercial fisheries would have a totally negative effect on international competitiveness of the U.S. commercial fisheries products. Already we are not competitive in foreign fish trade and are regularly undersold by foreign nations, i.e. Russia, Netherlands, Korea, Japan, etc.

Mr. Chairman, in summary we suggest and recommend the following changes in the Act for serious consideration.

1. Much of the data as regards current over-utilization of the resource is highly suspect. The

Act should provide for a national study and stock assessment conducted by independent nationally known fish scientist to get at the facts before any strict quota is set on a particular specie.

2. The Secretary of Commerce should have clear authority to amend, alter or over-rule any FMP, based on erroneous data, conflict of interest by council members or serious economic loss to the commercial fishing interest.

3. The Act should require timely data on which any quota may be set regarding a particular specie of fish.

4. The Act should provide in strong terms for equal representation by commercial fishing interests on councils. The Act should require in strong terms that all voting members on councils should be required to have demonstrated expertise in the area represented, i.e commercial fishing, recreational fishing, etc.

5. The Act should provide that all decisions made by the process, i.e. Councils, Regional Directors, NMFS and the Secretary of Commerce, effecting the economic health of the fishery, that an economic impact statement must be presented and discussed in open hearings.

6. Foreign nations are allowed to export to the United States, undersized fish, such as flounder (fluke) from Argentina and Uruguay. We recommend that the Act be revised so that foreign exports into the U.S. be required to meet the same standards that American fishermen are required to meet, i.e., size of fish, size of nets (mesh), turtle exclusion devices, etc. Such a rule or law will put American fisherman on a level playing field with foreign competition. This recommended change should include all seafood being imported into the U.S., including shellfish.

We have suggested other changes in our previous testimony this morning. We thank the Chairman and the Committee for its attention to our testimony. Mr. Daniels and myself stand ready to respond to questions from the Committee to the best of our ability and knowledge.

E. W. Barr
Consultant
Wanchese Fish Co. Inc.
Chairman
Fish Marine Corp.

TESTIMONY OF
JOEY DANIELS, TREASURER
WANCHESE FISH CO INC
BEFORE THE SUBCOMMITTEE ON
REAUTHORIZATION OF THE MAGNUSON ACT
6 NOV. 1993

MR. CHAIRMAN, MR. LANCASTER AND MEMBERS OF THE SUBCOMMITTEE.

MY NAME IS JOEY DANIELS, TREASURER, WANCHESE FISH CO INC. OF WANCHESE, N.C.

AS INDICATED BY CAPTAIN BARR IN HIS TESTIMONY, WE APPRECIATE THIS OPPORTUNITY AS ACTIVE COMMERCIAL FISH HARVESTERS, PROCESSORS AND MARKETERS OF FISH DOMESTICALLY THROUGHOUT THE UNITED STATES, TO TESTIFY ON THE FISHERY MANAGEMENT PROGRAM ESTABLISHED BY THE MAGNUSON FISHERY CONSERVATION AND MANAGEMENT ACT.

IN ADDITION TO THOSE ITEMS TESTIFIED TO BY CAPTAIN BARR, WE DRAW YOUR ATTENTION TO THE FOLLOWING THAT IS ADVERSELY EFFECTING OUR COMPANY AND OUR INDUSTRY.

1. THE MAGNUSON ACT SHOULD BE AMENDED TO INCLUDE A FINDING, A PURPOSE AND A POLICY CONCERNING THE VALIDITY OF, THE ECONOMIC IMPORTANCE OF AND THE SOCIAL IMPORTANCE OF SMALL AND FAMILY ORIENTED FISHING OPERATIONS. THE INDEPENDENT FISHERMAN, THE SMALL BOAT OWNER / OPERATOR, THE SMALL PROCESSING MARKETING FIRMS, THOSE WHO HAVE PASSED ON A FISHING TRADITION FROM ONE GENERATION TO ANOTHER, ARE AN INVALUABLE PART OF THE FISHERIES SYSTEM. THESE FISHERMEN AND THEIR FAMILIES ARE ALSO AN INTEGRAL PART OF OUR COASTAL COMMUNITIES, FROM MAINE TO FLORIDA.

THEY REPRESENT WHAT AMERICA IS SUPPOSED TO BE ABOUT--- THE ABILITY TO EARN A LIVELIHOOD WHICH AFFORDS A HOME, AND A COLLEGE EDUCATION FOR THE CHILDREN.

THE REGULATIONS ESTABLISHED UNDER THE ACT BY THE NMFS AND THE MANAGEMENT COUNCILS, ARE TO THIS DAY DENYING US THIS RIGHT.

2. THE ACT STATES " CONSERVATION AND MANAGEMENT MEASURES SHALL, WHERE PRACTICAL, PROMOTE EFFICIENCY IN THE UTILIZATION OF ITS FISHERY RESOURCES; EXCEPT THAT NO SUCH MEASURE SHALL HAVE ECONOMIC ALLOCATION AS ITS OLE PURPOSE.

AN ECONOMIC IMPACT STATEMENT SHOULD BE REQUIRED BEFORE ANY MANAGEMENT PLAN OR GEAR REGULATION PLAN OR REDUCTION IN QUOTA, IS ESTABLISHED. AS INDICATED IN CAPTAIN BARR'S TESTIMONY, SINCE 1989 THE SEAFOOD INDUSTRY HAS LOST OVER 700 MILLION DOLLARS IN SALES, NEARLY 1,300 SEAFOOD BUSINESSES HAVE FAILED, AND MORE THAN 22,000 JOBS HAVE BEEN LOST. THESE LOSSES MUST BE HALTED IF WE ARE TO HAVE A FINANCIALLY VIABLE SEAFOOD INDUSTRY.

MUCH OF THIS HAS BEEN CAUSED BY REGULATIONS THAT HAVE NO REAK IMPACT ON CONSERVATION. FOR EXAMPLE, QUOTA'S ARE ESTABLISHED BASED ON OUT OF DATE AND SOMETIMES FALSE DATA, RESULTING IN QUOTA'S SO LOW THAT IT IS IMPOSSIBLE FOR THE BOAT OR THE FISH HOUSE TO MAKE A PROFIT. A SOLID ECONOMIC IMPACT STATEMENT BEFORE SUCH RULES OR QUOTA'S ARE ESTABLISHED, WOULD GO A LONG WAY TOWARD CURBING THIS SITUATION.

1. DISCUSS THE RECENT GEAR MEETINGS
2. DISCUSS THE SUMMER FLOUNDER SITUATION, COUNCIL SAYS STOCK OVER FISHED, OUR EXPERIENCE AND FACTS SAY STOCK IS FULLY RECOVERED.
3. HABITAT CONSIDERATIONS SHOULD BE ADDED TO FISHERIES MANAGEMENT. WHILE OVERFISHING IS CERTAINLY ONE OF THE CAUSES FOR THE DECLINE IN FISHERY RESOURCES, WANCHESE DOES NOT BELIEVE THAT THE EFFECT OF HABITAT DEGRADATION HAVE BEEN FULLY EXPLORED. FOR EXAMPLE, A RECENT STUDY AT THE NORTHEAST FISHERIES SCIENCE CENTER SHOWS THAT WATER POLLUTION DIRECTLY CONTRIBUTES TO THE MORTALITY OF EMBRYPNIC AND YOUNG MACKEREL , WINTER FLOUNDER AND OTHER SPECIES. HOWEVER, THIS MERELY REPRESENTS THE TIP OF THE ICEBERG IN TERMS OF THE POTENTIAL EFFECTS, HABITAT DEGRADATION IS HAVING ON FISHERIES. WE BELIEVETHAT AS MUCH AS 55 TO 65 PERCENT (65%) OF THE ALLEGED OVERFISHING IS ACTUALLY DUE TO HABITAT DEGRADATION, SUCH AS CHEMICAL RUNOF FROM LAND, ETC. MARINE BIOLOGIST ARE WELL AWARE OF THE PROBLEMS CAUSED BY LOSS OF WETLANDS BY COASTAL DEVELOPERS. THE PROBLEMS OF NUTRITIONAL OVERLOAD AND TAXIC ALGAE BLOOMS WHICH RESULTS FROM AGRICULTURE RUN-OFF AND HUMAN SEWERAGE DUMPING; DAMAGE FROM INDUSTRIAL TAXINS AND HEAVY METALS WHICH ARE EITHER DUMPED OR WASHED INTO STREAMS, BAYS AND THE OCEAN ITSELF, AMONG OTHER FACTORS.

IT IS TIME TO STOP BLAMING COMMERICAL FISHING FOR STOCK DEGRADATION. IN SO FAR AS WE SEE, MANAGEMENT COUNCILS ARE NOT DOING ANYTHING TO ADDRESS THESE PROBLEMS. TODAY, ALL THOSE COSTS ARE FALLING ON THE BACKS OF THE COMMERICAL FISHERMEN AND THE FISH HOUSES.

NOTE; SEE CASE COMMENTS

MR. CHAIRMAN THIS CONCLUDES MY STATEMENT. MR BARR AND I STAND READY TO RESPOND TO ANY QUESTIONS YOU ARE COMMITTEE MEMBERS MAY HAVE. WE THANK YOU FOR YOUR ATTENTION AND ALLOWING US TO PRESENT OUR VIEW-POINT.

JOEY DANILES.

TESTIMONY OF MR. CHARLIE FEARING
BEFORE
THE SUBCOMMITTEE ON FISHERIES MANAGEMENT,
COMMITTEE ON MERCHANT MARINE AND FISHERIES
NOVEMBER 6, 1993

Good morning, Mr. Chairman, my name is Charlie Fearing. I am with Top Fin Company of Wanchese, North Carolina. I want to thank the committee for taking the time to come here and talk with us about the Magnuson Act.

Top Fin is a company that is organized to handle domestic and foreign sales of seafood. The company has two locations and is equipped to package and ship seafood from the Hatteras facility and to process and ship from Wanchese.

Our time is short, so I want to make a few, brief points.

1. We must help the commercial fisheries.

Seafood is an important part of the daily food supply of the United States. Statistics from the Library of Congress show that U.S. commercial fishing produced 8.5 billion pounds of seafood worth \$3.8 billion. While the United States is the world's largest exporter of food, our country imports about half of our seafood and as much as 80% for some species. We do not lack the resources to be self sufficient. We have failed to make the commercial fishery an integral part of

our national priorities as we have other food production. In the huge Federal Budget book, there are more than 120 pages of programs in the Agriculture Department to foster farming and food production. Fisheries programs in the Commerce Department have less than 5 pages of programs, most of which are unfunded.

2. Each of our fisheries have problems.

In the mid Atlantic, we are alarmed about low blue fin tuna populations. To the north, in New England, cod, flounder and haddock populations have dropped. Along the Southern Atlantic, shark, grouper and tile fish have declined. Our business has to be regulated for the sake of prosperity but please do not put us out of business. Help us until we can create sustainable harvests. This period for commercial fishing is like the Dustbowl for agriculture. We need to change but we need to change for the better. Our concerns about regulation is that it makes the cost of our production of seafood directly more expensive to the consumer. This hurts us in competing with foreign imports which have no regard for the marine environment or resource management and little interest in sanitary and wholesome seafood handling practices.

3. The division of the fishing community.

Unfortunately, there is growing tension between the recreational and commercial fisheries. It is a question of economics. Recreational anglers caught an estimated 285.5 million fish in 1992. On this retained harvest of 164 million pounds, those anglers spent \$9.8 billion in pursuit of their sport. Those fish dinners are very expensive per pound, about \$59.75. As we said earlier, U.S. commercial fishing harvested 8.5 billion worth \$3.8 billion for an average of 45 cents per

unprocessed pound. This is an economically competitive source of protein.

However due to the enormous productivity of the commercial fishing fleets, our numbers are few.

Recreational fishing has millions of advocates.

The recreational anglers think the commercial fisheries have over fished the stocks. The commercial fishermen think recreational demands resemble a hunter telling a farmer that he must grow corn instead of alfalfa because the corn promotes more deer for hunting. Both attitudes are shortsighted, but they play into a greater fish management problem.

Since we are here to discuss the Magnuson Act, here is an example. North Carolina has no votes on the Mid Atlantic Council. Since state governors make nominations, the politics most often reflects the more numerous recreational anglers to the detriment of the commercial fisheries. Commercial fishing has almost no genuine representation.

In closing, American commercial fishing is facing a horde of problems. Foreign competition, financing, depleted resources, and an increasingly negative image. Commercial fishing is a difficult and dangerous way to put food on American tables but we do it at a reasonable cost. We have chosen this way of life and we have provided value to our country. Please help us continue our work of providing wholesome food. Let us work together to improve the fisheries resource and the marine environment for the benefit of everyone. Thank you.

Statement read to September Meeting of the NCFA
Carteret County Auxiliary

by Mildred Gilgo, secretary

When Jesus walked the shores of Gallilie and chose Peter to follow him, he chose a fisherman. Yet even religious educators portray this fisherman as lowly and uneducated, because the educators are not fishermen. But the fisherman knows why he was chosen: he was stable, dependable, and wise. He was not afraid but courageous. He was strong and humble. He could endure hardship. He was patient, so he depends on his Master. He was persecuted so he knows how to bend and bear with nature's events. He was not just a fisherman by trade but by heart; not by education but by tradition and choice. He was crucified because he followed the teachings of his Master and we are still being crucified today for the same reasons.

History of Events for Fishermen since WW II:

In the second world war fishermen were recognized by defense for the way they put their lives at stake for their country. They carried radios for the defense as they worked in secret for the government to intercept messages at sea. Many were on documented vessels under customs and were covered under maritime law and were under public health programs of this country. They were never paid but because of their secret service (their families did not know until after the war...my father was one) they were given this privilege just as merchant marines who were very well recognized. They were the confidential observers.

The 1st major blow was the cancellation of public health without a grandfather clause so that those that had had it then died without insurance. Proud men were reduced to welfare, not out of their choice but the governments choice.

Next came the start of self-employment. On larger trawlers and company trawlers with crew and captain fishermen became employees. Social security tax was withheld by the employer on crews even though they were paid by the share basis. But then it passed that if the vessel was under 10 metric tonnage the crew was self employed. No taxes withheld, no unemployment benefits.

Then it passed that if you had less than 5 men on board you still do not have to pay social security tax or take out income tax. Now all fishermen became self employed even though by IRS standards they were in part still employees. This took responsibilities off the employer, even though the employer could hire and fire at will.

Another great blow was the problem of foreign trawlers harvesting and processing in U.S. waters. Unlike American trawlers, who return bycatch to the water to be consumed in the food chain, foreign vessels took all. Laws were passed to keep foreign vessels out, but how could this be enforced?

Many fishermen began to buy smaller boats. Most operations had supported at least two families, but now two family supports are gone to one person operations because of the cost, regulations, and fear of suits. Most cannot afford vessel or health insurance.

A huge blow to watermen now is imported seafood. Shrimp prices were higher in 1975 than they are now.

Regulation Problems:

The Endangered Species Act required shrimpers and flounder fishermen to use TEDs to save turtles. Yet vehicles are still allowed to drive over beach nesting areas. Coastal development goes uncontrolled. Fishermen are unfairly targeted and burdened with the responsibility because they are easy targets.

Bycatch: the MYTH is that fishermen are responsible for reduction of fish species because of trawl bycatch. Yet we have been using Fishfish Excluder Devices for over a year. The FACT is that fish are declining because of the declining water quality of their habitat. When small fish show there is little shrimp. So fishermen return home and wait. When shrimp are caught fish are less common and fishermen shrimp with TEDS and FEDS. Any bycatch that returns to the water is eaten by gulls or crabs...back to the food chain.

Fisherman have worked with the elements, understood tides, weather patterns, fish migrations, and know pollution is the greatest source of fishery declines. Greed, development, and no stewards of the environment are the true culprits. Man and the sea have always worked hand in hand. Man cannot control the sea but has tried to control the land and all waters from land run to the sea along with all of man's garbage. By imposing so many regulations you only deal with the outcome of water pollution and not the reason. It is easier to blame than correct. But it is cheaper to prevent a disaster than to pay for one.

Wetland restrictions are being loosened while fishermen's restrictions are tightening. If the state really cared about fisheries, why not target overdevelopment, runoff, clearcutting, and heavy industry?

- protect wetlands
- control development
- the state should not be bullied by developers and politics. Division of Marine Fisheries should work with fishermen. Instead they perceive fishermen as ignorant, selfish, uneducated rednecks. We must all work together.
- bring sportsmen and watermen together over the common cause of water quality and fisheries health

- protect watermen from destructive social changes and power politics like Native Americans are protected
- don't restrict menhaden boats or mullet set netters because they inconvenience or offend someone
- Inshore trawlers and haul seiners take ALL GEAR out of the water when they go home.
- Limited entry: fisheries will limit themselves. There is not enough product or value to justify limited entry. Most fishermen switch gear and fisheries often, making limited entry unfeasible. This would also be hard to enforce. Many good regulations now go unenforced.

The government should recognize and protect the right of American citizens to make a living, especially if they are hurting no one and no evidence exists showing they damage the environment. Now Commercial Fishermen are the Endangered Species.

SUBJECT: Presentation on H.R. 780, Legislation to authorize funding for the Magnuson Fishery Conservation and Management Act.

DATE: November 1, 1993

FROM: Carl Hagenkotter III
2918 Flagler Avenue
Key West, FL 33040

TO: Subcommittee on Merchant Marine and Fisheries.

Mr. Chairman, Ladies, and Gentlemen. I appreciate your invitation to speak on behalf of many citizens who contribute to the local and national economy and who will be significantly damaged financially by any funding of this Act. The problem is not the Act itself but how it is interpreted by the people getting the funding.

I realize that your former Colleagues had no intention of devastating the Commercial Fishing Industry when they wrote the Magnuson Act. In fact, their intention, "to promote the Commercial and Recreational Fisheries" was meant to be a help to these Fisheries. The opposite has happened. In the South East region, we now have five government agencies competing in a Legislative frenzy, to see which fishery they can completely eliminate. Their rules and regulations are non stop. Their deviations from their own rules are no longer a surprise. Their calculated destruction of data that doesn't go along with what they want to do, barely gets the blink of an eye anymore. Their ability to keep people off the Councils who would represent the commercial industry rightfully, is legendary. Their ability to expand problems and make them greater than they really are, is amazing. Their ability to control negatively, the development of new equipment that might help the industry control the problems they are raising, is absolutely ludicrous. Their ability to force inefficient equipment on the commercial fishermen, require it's use, and then block any attempt to modify it, is unbelievable. The final unbelievable act is that it could happen in America, to people who are mostly uneducated and only want to make a living, feed their families, and be respected in their communities.

No long term solution will save the commercial fishing industry. A message needs to be sent to the South Atlantic Fishery Management Council, the Gulf Fishery Management Council, the National Marine Fisheries Service, the National Marine Sanctuary and the Fish and Wildlife Service. This message should say that unless these groups get in line with the original spirit of the Act: "To promote the Commercial and Recreational Fisheries" that no funding will be coming.

Something needs to be added to this Act to tell these groups what your intent is when you state "to promote the commercial and recreational fisheries". We the fishermen believe you when you say this. Those groups I mentioned above don't understand and have not obeyed. They continue to regulate us out of business when we are not the problem. In South Florida we know the problem is pollution and sewage. Thanks to your help we are now moving in the direction of cleaning Florida Bay. This is very important because South Florida will have no fishery unless this is done quickly. The point is, that this pollution has caused the decline in the fishery. We, the commercial fishermen, have been punished, for what other groups have made the major contribution. It is time to stop punishing the horse for the barn door being left open.

My personal problem with these groups centers around the National Marine Fisheries Service who regulates and gives information to these Councils. It was my misfortune to run into Dr. Fox, the head of the National Marine Fisheries Service, at the time. Dr. Fox is presently in trouble for destroying information that would have been helpful to commercial fishermen. Anyone who says the bosses attitude doesn't extend to his employees is very wrong. I tried to develop and use a unique trawl system that would exclude all turtles, not lose shrimp, be more economical to tow, and reduce bycatch. For this Noble endeavor I was arrested, charged with a crime 1 year and three months later, tried and convicted, and fined more money than I had. At the same time I was being tried and convicted I was funded 16,000.00 to do a 3 month project. This money was from SK funds which was provided by you, the Congress of the United States. The NMFS during this time did everything in its power to keep me from succeeding. How I came through it I will never know. In this process I gained the attention of knowledgeable people who understood what I was doing. With those people and a Congressman behind me I succeeded in getting a test of my device. In order to test my device I needed to take it out in the ocean and tune it up, after it sat on land for months. I was arrested, ordered to the dock, and my catch was confiscated. This was 4,400.00 that would have done a lot of research. The bad part is that I didn't get the new excluder on correctly, due to being arrested and failed the test by capturing 4 turtles. Part of this was because the turtles only had 5 minutes to get out. This didn't stop me and I went back to the old design. This time I ran 12 out of 12 turtles in 19 seconds or less. This makes the Hagen Trawl the fastest turtle excluder in History. You are more than likely saying to your self, right now, what is the problem. It takes 22 turtles to pass the test and the NMFS cut the test off at 12 even though they had the time and the turtles to run the rest. A few weeks after this Judge Dolan informed me I was a turtle Criminal. This just added insult to injury. The turtle panel who reviewed the test had high praise and recommended that I pursue this concept. I don't think they realized that the only way for me to pursue it was

from a jail cell. This is how NMFS rewards innovation.

The complete story along with documents is in my letter to the President.

Thank you very much for listening to me. If you have any questions I will try to answer them.

Sincerely,


Carl Hagenkötter III

August 7, 1993

President Bill Clinton
C/O Marsha Scott
White House
Washington, D.C. 20500

Mr. President:

Thank you for all your help. I have enclosed a copy of the last turtle test in Panama City, Florida. You would think that this test, where I excluded 12 out of 12 turtles, would be the end of my problem. Not so, as the panel gave me great and unanimous praise but would not make this legal to tow.

We now have the best turtle excluder in existence sitting on land, saving no turtles, waiting for next years test. They have kindly consented to another test in May of 1994. This will not save me, as my boat is in such bad shape that I must scrap it, as I cannot Shrimp my trawl to make enough money to fix it.

The Bank won't lend me the money because of pending litigation by the NOAA. This is because they have told me I have a "possible violation". Under the present laws, NOAA has the ability to charge me with a violation until the day that I die, even if I live to be 100 years old. I don't blame the Bank at all, as their money wouldn't be secure. Even through they haven't charged me with anything yet, their statute of limitations exceeds everything except Murder.

I am very disappointed that the panel couldn't at least make this trawl legal to do more research. I am happy that they saw fit to give me a good recommendation.

I saw the panel use statistical evaluations to ascertain if a TED would be effective on a TED that had passed the test. They required further modification to it before it would be legal. Keep in mind that it passed the test already by excluding 23 turtles and only catching 2. I take this flexibility, by the turtle panel, to mean that even if the TED passes the test they still have the authority to make modifications mandatory before passing it. That is why I feel with the statistical data presented at the evaluation, my trawl should have been legalized, at least for myself to do further research. The reason the panel couldn't do this is because of Chuck Oravetz (NMFS St., Petersburg, Fl.) He has been against me for three years and will do everything in his power to keep me from introducing this trawl. His reason is simple: No trawlers, trawling is safer to turtles than using present TED's. He knows that this trawl might eliminate their power to destroy the fleet, if it is safe for turtles and will not lose shrimp. He also

knows that use of present TED's will financially destroy the shrimp fleet, as the decline in the last four years is evident. This is not right. I wouldn't be surprised if the man doesn't take money from the Mexican Government to smooth things over, so that TED's will not have to be pulled in Mexico.

By statistical percentages this trawl is much more effective than the NMFS TED. Injecting 12 turtles into my net without a capture is statistically about a .5 percent chance that in 13 more turtles, even 1 of the 13 will be caught. The chance of catching 4 more turtles, which is what it would take to fail the TED, is less than that. Therefore, there is a very low probability that my TED would have failed had they let me run the 25 turtles that I wanted to run. In catching less than 3 turtles out of 25, my TED would be better than the NMFS TED, which is the standard that we judge all TED's by. The NMFS TED is not used because it loses too much shrimp.

This test is already conservative. In real life, 4 nets the size and larger than my net are towed in normal shrimping operations. NMFS says that a normal shrimp trawler will catch 5 turtles a year if they don't use TED's. This is 1.25 turtles per net that might be caught in one year. Therefore, using the data collected on the 12 turtles tested and subjecting my TED to 25 turtles in the wild, would be like towing my TED until the year 2012 until there would be a reasonable chance of encountering one turtle. These figures show that there is a very small chance of harming a turtle at all. The possible benefits to the industry are great and the risk is very small.

I was right all along about the excellent turtle exclusion capabilities of the Hagen Trawl. I should have been allowed to continue my research, shrimp in areas outside of 70 feet, and been given help or have NOAA get off my back so I can help myself.

Any concerns about shrimp retention and the industry not using this trawl are not correct. The regulations I have been under in the past have not let me make comparisons to other trawls who can tow all night. The older shrimpers may not ever use this trawl because they are not able to change to a new concept. Indeed, why should they when they have limited years in the industry, left? The future is the new guys coming into the industry. These are the guys that believe in space travel and "Star Trek the Next Generation". To use different gear is not so far fetched to them as it is to the older members. I am confident that this trawl will out produce any other trawl. So, when I state that I think this trawl will equal any other trawl, I am really being careful.

Ron Brown and Bruce Babbitt have yet to write me. I will send them a copy of the film. I am sure that the NMFS will justify their actions, against me, to them. I am also sure they will believe them over me. I really didn't have a chance

to begin with. The system they have set up doesn't work for fishermen. The whole idea is not to exclude turtles, but to exclude fishermen from fishing. I cannot fight for this trawl on its merits, anymore. I must turn to and trust the courts to expose them for what they really are.

Thank you again for your help. Please hang in there and run again in 96. The Country needs a lot of straightening out after the last 12 years. I know you, Mr. President and Al Gore are the men to do the job.

Sincerely,

A handwritten signature in cursive script, reading "Carl Hagenkotter III". The signature is written in dark ink and is positioned above the printed name.

Carl Hagenkotter III

cc/ff

Vice President Al Gore

July 13, 1993

Nancy Foster, Ph.D.
Acting Assistant Administrator
for Fisheries
National Marine Fisheries Service
1335 East-West Highway
Silver Springs MD 20910

THE DIRECTOR:

Thank you for taking the time to write me. I found your letter very amusing. It is obvious that you are unaware of what has been going on, for four years, with the Hagen Trawl.

In your second paragraph you state "I advise you to seek clarification of any of the requirements that you find unclear, and to conduct your research activities with the authorizations specified by regulation." The regulations clearly state that you are authorized to give me the permission needed to further develop this trawl. You have been asked for permission many times by many different people involved in this process, such as The Gulf and South Atlantic Fisheries Development Foundation (GSAFDF), Monroe County Sea Grant and myself. You have been sent information and reports detailing ongoing research information and conclusions, including a report on a project paid for by Congress through the GSAFDF. You still don't get it. You still don't understand what is going on. You only have to call me to find out.

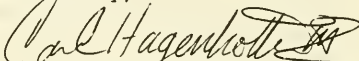
My Trawl was recently tested off Panama City, Florida at my own expense. I will be at the review of my trawl in Pascagoula, Mississippi and will discuss this trawl design with them. The only problem is that this trawl is two year old technology. What I learned in the last two years has developed into the trawl that will solve the problems in the shrimp Fishery. The larger, expandable trawl is what will do the most good for fishermen. It is too bad this trawl will not be discussed, as I understand you are now in the beam trawl development business. Normally this wouldn't bother me. But your stalling me while you try to develop what I have already developed has left me poor and out of business. You have ruined my life and I don't take kindly to this.

The last sentence in the third paragraph typifies the attitude of the Washington Branch of the NMFS. Where you state "NMFS will evaluate the recommendations, and determine which, if any, are appropriate for certification." This doesn't surprise me at all. You have not only sent me permits for research that are not worth the paper they are written on, but

you have also sent permits that arrived after they expired.

In regards to your last paragraph, you are the person who needs to clarify why it is such a long process. As you state later in the last paragraph, alternative gear designs are crucial to the future of the industry. Well, at least you understand the impact you have had by keeping industry from developing this needed equipment. I am sure allowing shrimping to continue has not been on your agenda for many years. I don't need your wishes for success. It pains me to see my Government has degenerated into what you are. A public servant that serves no master but himself or herself for the purpose of destroying a long standing industry.

Sincerely,

A handwritten signature in cursive script, appearing to read "Carl Hagenkötter III".

Carl Hagenkötter III

cc/ff

President Clinton

Vice President Al Gore

Congressmen Peter Deutsch

Ron Brown

Bruce Babbitt

Doug Gregory

Carl Hagenkotter III
 2918 Flagler Ave.
 Key West, Fl. 33040
 (305) 294-4282

The President of the United States
 of America.

Re: The problems in the commercial fishing industry in respect to Government organizations. The iron hand of the NMFS/NOAA which is putting people out of the industry. The lack of flexibility of these same groups that makes research impossible. The utter confusion of the people interpreting the laws for their own ends. The process of making fishermen criminals who have a better way to do things (not their way) in order to get them out of the way.

Dear Mr. President,

For the first time in 12 years I have confidence that the Government can be made to work for all people of the USA. Just like the loggers in Washington State, the commercial fishermen have had to deal with many things that were not fair or correct. This has come about by Government organizations that needed to blame someone, justify their existence or please a special interest group. Power politics against the little guy who can't fight back.

My Mother was born and raised in Mayflower, a few miles outside of Little Rock. She has always said that someone from her neck of the woods, would be best for the Country. Following your campaign, I think you are the right person for the Country. Needless to say, your approach of going to the people turned out to be the best. I know you have alot of problems that are much more important than ours. I have tried hard to get someone in government to listen to our plight, to no avail. That is why I am asking for your help. There are many problems down here and NMFS and NOAA are not listening. They continue to law us out of business in favor of special interests.

I read in the paper that you are going to have a council to review the Spotted Owl problem. Did you know that the same type of problem that the loggers are having are the same type of problem that commercial fishermen are having? Could you appoint someone to look at our problems with NOAA and NMFS? In the past the people sent to listen to us would simply say at the beginning that they were here to tell us what they were going to do. They had no intention of listening to us in the first place. Most of what they were going to do was made up in meetings that we were not allowed in and meetings we were allowed to attend were at times and in places that made it hard for people to be there. This type of special interest, power politics has been the normal operating procedure for NOAA and NMFS. Could someone look into this with an open mind so we can have our jobs back?

(2)

There are many problems down here, but blaming the fishermen will not solve them. (enclosure 1) I believe pollution and lack of fresh water in the everglades is to blame for most of the fishery decline. (enclosure 2) As you can see in the article by Jack Lawson, the Army Corps of Engineers is ready to tackle the problem but as usual special interests are ready to throw it out over one little bird. Until we have water flow back the problems blamed on the fishermen will not be solved. This is evident from the way the solutions never work and only require more solutions the next year, which means that only the commercial fishermen will have to carry the load again. I do not agree with the present methods which takes jobs away from honest working people. There must be a better way than forcing them into welfare and food stamps.

Another thing that NOAA and NMFS has done with the turtle problem, besides making it bigger than it really is, is make it impossible to do any research to find ways to protect them and still make a living.

I am now working on a government project, #49-08-1583, to develop a better working trawl that will protect turtles and reduce bycatch. The restrictions imposed by Chuck Oravetz, NMFS Protected Species branch, 9450 Koger Blvd, St. Pete, Fl., 813-893-3366, makes any practical research impossible. To get permission to do a change to a trawl I have to write to him and he doesn't open his mail for a month. Then when I get an answer he cannot do anything on his own without first going thru Washington, D.C. Going thru Washington takes another month. Phil Williams, NMFS office of protected species, Washington D.C., handles this. Can you help me with this?

I should explain that I have a grant DOC# 235-176 that was mandated by Congress, to be administered by NOAA, thru the NMFS, for private industry groups to develop better fishing equipment. This shows that Congress is concerned enough to try a different approach to the gear problems than the NMFS did. This has also made them mad that the gear which they say works and fishermen say doesn't could be in question. I believe this is one reason why they hold up permits so that private industry will fail, so they will look good.

Projects like mine have a deadline of January 31, 1993. NMFS was supposed to give the money to the Gulf and South Atlantic Fisheries Development Foundation, 501 W Kennedy Blvd., Suite 997, Tampa Fl. 33609, at the beginning of last summer. Since they didn't release the money until October this one year project has turned into a 3 month project. Even thru the Hagen Trawl has come along way, we could have done better if we didn't have all the legal problems with permits from the NMFS. There is still much to do but time has run out.

(3)

In order to do practical research we need flexible tow times, flexible gear modifications, and 9 months of the project they stole from us. Without these things the NMFS has insured that our hands are tied and the data that we collect and our progress is impeded.

The only way I see to solve the problem is to take the authority to write permits and give it to Sea Grant. Doug Gregory, Monroe County Sea Grant, 305-292-4501, would be an excellent choice, as he is close to the fishermen and is trusted by them as NOAA is not. This will help the entire industry. There are plenty of good ideas out there, but fishermen are understandably unwilling to go thru the two years of red tape it takes to get an idea permitted to try out. Also the confusion about the laws is unbelievable, as you will see later in my letter.

My situation in the development of this trawl is a little different than most people that wanted to try out an idea. It happened like this. In 1987 I realized that the otter trawl (enclosure 3) may never be able to achieve the goals that it was being asked to do. It was developed in the 1950's when fuel was cheap and TED's (enclosure 4) BRD's and FED's were not made or required by law. I realized after I saw the shrimp loss from TED's, which most fishermen say is 30% or more and NMFS says is 5% or less, that the addition of a FED to a TED would incur even more loss. I knew the industry couldn't stand this so I decided a new approach was necessary. I took what I know about trawling and made a small try-net measuring 12 ft. and tried it out while I was towing my 60ft otter trawls. After I got it tuned up I was amazed at the increased catch rate over the same size otter try net. I thought if I could increase the catch rate the loss due to TED's, BRD's and FED's would not be so bad. I started development of two larger versions which were legal. To make a long story short there were many problems that I worked out over the next two years, at my own expense. I was finally able to work on my TED which was not required at this time. But, as fate would have it the laws kept changing and in order for me to continue my research and be legal, I had to change the trawl 3 times in 1½ years. I had to keep making it smaller in order to conform with the new laws.

What got me in trouble was not understanding how the law process works in making laws. The NMFS published a perspective on what the new laws were going to be. It said that a vessel over 25ft in length could pull try-net(s) no larger than 25 ft. I made the modifications by changing the beams to 16ft. The net was made 25ft. I didn't think this a problem as the rest of the world measures a beam trawl by the width of the beam. Karen Raine used a law written for otter trawls and applied it to my beam trawl even though there is no president in the law and indeed this trawl is not addressed in the Federal Register anywhere.

(4)

My only mistake in this is I didn't check the Federal Register when it came out. This was a bad mistake as when the law was written they dropped the (s) that was on net(s). This according to the Office of General Council, made one of my trawls able to catch turtles and the other one not, even though they were both the same and were towed in the same area at the same time. The Coast Guard boarded me, didn't know what this trawl was, so they called the NMFS in Key West, Florida. Mr. Smith of the NMFS told them to bring me back to the dock. They complied. Upon getting there, Mr. Smith told me he didn't know what this trawl was but, he did know that it is illegal. How can something be against the law when you don't know what it is? He issued me a citation and took away my nets. Wait, it gets better. He told me if I went back out he would arrest me for a second violation and throw me in jail.

Karen Raine, (813-893-3617, Office of General Council) didn't issue me a notice of violation until 1 year later when I applied for a permit to use the trawl in a government assisted program by the Gulf and South Atlantic Fisheries Development Foundation. During the 2 years before I got the grant, I worked on land when I could find work. My boat sat at the dock idle. Until the foundation called me about the Grant I didn't think the boat would ever move again. I thought since Congress was behind me everything would work out. Little did I know that the prosecutor, Judge and Mr. Fox all work together and should be the same organization. Miss Raine trumps up anything she can put together using the law confident that Judge Dolan won't step on her toes and indeed always finds in favor of NOAA. Then if you want the verdict reviewed it goes to Mr. Fox's office and he renders the final decision. If this is not the Fox guarding the hen house I don't know what is. They are really JUDGE JURY AND EXACUTIONER all in one. Shouldn't this be changed?

Chuck Oravetz wouldn't give me a permit to tow my trawl in the government project until Karen Raine cleared me of being a potential "turtle killer" even though I hadn't caught one much less killed one. She wouldn't talk to me on the phone, even though I told her this was about the permit and not the violation. I finally had to call Dante Facells office (enclosure 5) and Barbra Burris talked to her. She then sent word to Chuck that it would be alright with her if he issued me a permit. I finally received my permit. Three days later I received the Notice of Violation 1 year after the fact.

Miss Raine, because I asked for a permit, issued a notice of violation 1 year later and is charging me with a 8,000.00 fine. She has offered me the chance to plead guilty and pay 6,000.00 which I don't have as I spent all the money I have on development and the two years she kept me out of work has left me bankrupt. Even in this government project to develop the trawl, the money I received for labor went to fixing my boat so the project wouldn't fail for

(5)

lack of good equipment. She still intends to take me into Judge Dolans Court, on March 8th, 1993. This will prove to be a black day for me as I have no lawyer and will be going into court alone.

Before I received the grant from GSAFDF, I was advised to build a model called a try-net and invited to bring it to Panama City, Florida, where testing of TED's is going on. I did this at my own expense and we got some remarkable underwater pictures. (enclosure 6) I hope you get the chance to look at the film because it shows that the industry can come up with some very good ideas on its own to solve the turtle and bycatch problems.

I was also advised, do to the wild interputation by Miss Raine on the legality of the larger trawls, to get an interputation of the law before I tried out the smaller one on my own vessel. This turned out to be good advice as Miss Raine made my try-net and every shrimper in the Gulf and Atlantic illegal with the stroke of a pen. (enclosure 7) Many people wrote her and advised here to change this before law enforcement compounded the error and arrested everyone. (enclosure 8) She wrote back and made everyone else in the Gulf and Atlantic legal again but wrote a paragraph that made only me illegal to tow my try-net even through it can't catch a turtle. You can see in the film that it is impossible for a turtle or a diver to get into the net. When Government officials do things against the will of Congress we don't have a Government anymore. We have a bunch of breucrats dicktating how they want things. Indeed, NOAA is answerable only to you. There job security is insured. Judge Dolan is appointed for life, by you. There are no checks or balances in this system except YOU Mr. President. There is no one else that can do something about this. The same type of thing that is done to me here has been going on with many other people that I know and unless you stop them will continue until the commercial fishermen is just a memory. We were Christs first choosen group. I am just glad that crusifixtion is not legal in this Country.

So far all I have talked about are the bad people. I want to give you the names and numbers of people who know what I am talking about. The same types of things have happened to them. Some are just good people who feel that we all have the right to make a living.

David Harrington	Georgia Sea Grant	914-264-7268
Doug Gregory	Monroe Sea Grant	305-292-4501
Judy Jamison	GSAFDF	813-286-8390
Liz May	NMFS Galveston lab	
Quintin Forrest	Tx.	409-766-3507
John Watson	NMFS Pasagula, Miss.	601-762-4591

(6)

Doesn't it seem strange that the people who are will to help develop new gear for fishermen all live out of Florida and the people who do their best to stop it all live in Florida. Maybe it is just a Florida and Washington problem.

IN CONCLUSION

I don't want to be a turtle criminal when I killed no turtles and was in the process of developing a trawl to better protect them. This has proven out to be the only trawl that doesn't lose shrimp. This is documented by NMFS and Sea Grant personal as well as myself. For them to say that one trawl on one side of the boat will catch turtles and on the other side won't is stupid and won't hold water. I don't want to be branded as a criminal and if I plead guilty and pay the fine I will be considered a first offender. I am basically being penalized for achieving something that NOAA was required by Congress to do and failed. They were required to reduce turtle mortality and bycatch and this they did, but at the cost of the commercial fishermen. This need not be this way if better equipment is developed. That is why they don't want better equipment developed because if it is they can't get rid of us as they have planned.

There must be a way, to enable a simple fishermen, to get a permit to do research to come up with ideas that will work to protect turtles. Good assessment of ideas and follow thru work by the GSAFDF, who are by partisan and will access the ideas based on their merit instead of politics. Permits should be made flexible to allow different changes to be made quickly without an act of Congress or having to run it thru Washington D.C. The best idea is to get rid of NOAA and let Sea Grant take over these responsibilities. They are closer to the people, can be reached on the telephone and understand about the ocean as to what the problems really are. They are not interested in throwing the blame but are interested in getting the real problems on the way to solutions to better the environment.

It may be too late for me but if you can help with my legal and permit problems I might still be able to have the Hagen Trawl available for fishermen to use. NMFS admits that TED's lose 5% of the shrimp. 5% since 1987 is a lot of shrimp and actually it is much more. This trawl does not lose shrimp and if they will let me use it I will prove that it will out shrimp any other equipment.

We need a hard look at the endangered species act and the implications on the Commercial fishing industry. NOAA's impact studies are a joke.

The commercial fishermen have shouldered all the blame for turtle population reduction. It is time the other causes made a contribution to saving them. These are:

(7)

1. Pollution
 2. Nesting beaches with lights on them.
 3. Papaloma, a turtle disorder.
 4. Plastic injection.
 5. Poaching of turtle nests.
 6. Ships going into channels.
- Togeather these things kill many more turtles in one year than shrimpers ever have.

We need to change the way NMFS/NOAA handles the fishery. People who don't know what they are doing or don't bother to find out should be gotten ris of. Just like the law that made it illegal to pet or feed dolphins. Thank God this was reversed and common sence prevailed. There is too much politics and not enough common sense. Laws should be made carefully so that people are not put out of work. For alot of people fishing is all they know. Putting them out of business is the same as killing them.

Just like the Spotted Owl problem these things shouldn't have been ignored for so long. I am sad about this and I blame the attitude of the Bush and Reagan years. They set the tone, such as Reagan telling NOAA that if they didn't do something they were out. Well, they did something, they picked on who would yell the least, the fishermen. If you can find a way to lead these people back to common sense, myself and alot of fishermen will be happy.

Thank you very much for your time. Good luck in office. It took along time to get a good man in the White House. The Country needs someone like you to set the tone for all of us to follow.


Carl Hagenkötter III

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